No. 12183

United States

Court of Appeals

For the Ninth Circuit.

GEORGE B. McCLYMAN, ELIZABETH SPENCER SAUERS, ELIZABETH BRAU and WILLIS N. URIE,

Appellants,

vs.

WILBERT C. HAMILTON,

Appellee.

Transcript of Record

Upon Appeal from the United States District Court the Southern District of California Central Division

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

GLENN A. LANE,
H. H. SLATE,
639 S. Spring St.,
Los Angeles 14, Calif.

For Appellee:

SYLVAN Y. ALLEN,
ERNEST R. UTLEY,
639 S. Spring St.,
Los Angeles 14, Calif.

In the District Court of the United States, Southern District of California, Central Division

In Bankruptcy Proceedings No. 45310-Y
Involuntary Petition in Bankruptcy

In the Matter of:

WILBERT C. HAMILTON, Individually, and the Partnership Known as BRUNSON AND BUNCH, Composed of WILLARD E. BRUNSON, DEON BUNCH, and the Said WILBERT C. HAMILTON,

Alleged Bankrupts.

CREDITORS' PETITION

To the Honorable the Judges of the District Court of the United States, Southern District of California, Central Division:

The petition of George B. McClyman, 639 South Spring Street, Los Angeles, California, and Elizabeth Spencer Sauers of 1034 Kendall Drive, San Gabriel, California, and Elizabeth Brau, of 221 Belmont Avenue, Los Angeles, California, respectfully represents:

(1) Wilbert C. Hamilton, of 1067 West 83rd Street, City and County of Los Angeles, State of California, and Willard E. Brunson, of 1183 Crenshaw Boulevard, City and County of Los Angeles, State of California, and Deon Bunch, 405 West Adams Boulevard, City and County of Los Angeles, State of California, are co-partners trading under the firm name of Brunson and Bunch, and your pe-

titioner file this petition jointly against said partnership and the said Wilbert C. Hamilton, individually.

(2) The said partnership has had its principal place of business at 610 South Broadway, City and County of Los Angeles, State of California, within the above judicial district, and the [2*] said Wilbert C. Hamilton has had his principal place of business at 639 South Spring Street, City and County of Los Angeles, State of California, within the above judicial district, both for the six months immediately preceding the filing of this petition.

(3) Within six years next preceding the filing of this petition, neither said partnership nor said Wilbert C. Hamilton has been known or has conducted any business by or under any assumed, trade, or other names or designations, according to the information and belief of petitioner.

(4) The said partnership and said Wilbert C. Hamilton each owes debts to the amount of One Thousand Dollars ($1,000.00) or over.

(5) The said Wilbert C. Hamilton is not a wage-earner or a farmer.

(6) The said partnership is not a farmer.

(7) The said partnership has not been dissolved, but business operations are not being continued.

(8) Your petitioners are creditors of said partnership and said Wilbert C. Hamilton, having unsecured claims against them, fixed as to liability and

liquidated in amount, amounting in the aggregate to Five Hundred Dollars ($500.00) or over. The nature and amount of your petitioners' claims are as follows:

(a) The claim of your petitioner, George B. McClyman, is in the amount of Twenty Thousand Three Hundred Fifty-Nine Dollars ($20,359.00) for money lent by him to said partnership and the said Wilbert C. Hamilton during the nine months' period immediately preceding the filing of this petition.

(b) The claim of your petitioner, Elizabeth Spencer Sauers, is in the amount of Four Thousand Seven Hundred One Dollars and 52 cents ($4,701.52) for money lent by her to said partnership and the said Wilbert C. Hamilton during the nine months' period immediately preceding the filing of this petition. [3]

(c) The claim of your petitioner, Elizabeth Brau, is in the amount of Eighteen Thousand Thirty Dollars and 90 cents ($18,030.90) for money lent by her to said partnership and the said Wilbert C. Hamilton during the nine months' period immediately preceding the filing of this petition.

(9) Within four months next preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 7th of August, 1947, they transferred the sum of One Thousand Four Hundred Seventy-Five Dollars ($1,475.00) to John P. Strutzel and Anthony M. Cioffi, doing business

as "Aircraft Stamping Company," 822 South Date Street, Alhambra, California, a co-partnership, and one of their creditors. Said transfer was made while each alleged bankrupt was insolvent and while each had more than one creditor, and was made with intent to prefer the said John P. Strutzel and Anthony M. Cioffi, doing business as "Aircraft Stamping Company" over their other creditors.

(10) Within four months next preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of Bankruptcy, in that on the 3rd day of July, 1947, they transferred the sum of Six Hundred Dollars ($600.00) to George B. McClyman, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent and while each had more than one creditor, and was made with intent to prefer the said George B. McClyman, over their other creditors.

(11) Within four months next preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 17th day of July, 1947, they transferred the sum of Two Thousand One Hundred Dollars ($2,100.00) to L. L. Farris and Company, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made [4] with intent to prefer the said L. L. Farris and Company over their other creditors.

(12) Within four months next preceding the fil-

ing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 7th day of July, 1947, they transferred the sum of Eighty-Nine Dollars and 28 cents ($89.28) to Elizabeth Brau, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said Elizabeth Brau over their other creditors.

(13) Within four months next preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 8th day of July, 1947, they transferred the sum of Fifty-Three Dollars and 93 cents ($53.93) to Elizabeth Brau, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said Elizabeth Brau over their other creditors.

(14) Within four months next preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 16th day of June, 1947, they transferred the sum of Twelve Thousand Dollars ($12,000.00) to Fletcher Baughn, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said Fletcher Baughn over their other creditors.

(15) Within four months next preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 16th day of June, 1947, they transferred the sum of Five Thousand Dollars ($5,000.00) to Nellie Fath, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each [5] had more than one creditor, and was made with intent to prefer the said Nellie Fath over their other creditors.

Wherefore, your petitioners pray that service of this petition, with a subpoena, may be made upon said partnership and said Wilbert C. Hamilton, as provided in the Act of Congress relating to bankruptcy, and that said partnership and said Wilbert C. Hamilton, individually, may each be adjudged by the Court to be a bankrupt within the purview of said Act.

Dated this 26th of September, 1947.

/s/ GEORGE B. McCLYMAN,
Petitioner.

/s/ ELIZABETH SPENCER SAUERS,
Petitioner.

/s/ ELISABETH BRAU,
Petitioner.

LANE & CASEY and
H. H. SLATE,
Attorneys for Petitioners.

By /s/ H. H. SLATE. [6]

State of California,
County of Los Angeles—ss.

George B. McClyman, Elizabeth Spencer Sauers and Elizabeth Brau, the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

/s/ GEORGE B. McCLYMAN,
Petitioner.

/s/ ELIZABETH SPENCER SAUERS,
Petitioner.

/s/ ELISABETH BRAU,
Petitioner.

Subscribed and sworn to before me this 26th day of September, 1947.

[Seal] /s/ G. N. WILLIAMS,
Notary Public in and for Said County and State.

[Endorsed]: Filed Sept. 26, 1947. [7]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 29th day of September, 1947;

Whereas, a petition was filed in this court on the 26th day of September, 1947, against Brunson and

Bunch, a copartnership, composed of Willard E. Brunson, Deon Bunch, and Wilbert C. Hamilton, alleged bankrupt above named, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Hugh L. Dickson, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Brunson and Bunch, a copartnership, composed of Willard E. Brunson, Deon Bunch, and Wilbert C. Hamilton, shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ BEN HARRISON,
District Judge.

[Endorsed]: Filed Sept. 29, 1947. [8]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 29th day of September, 1947;

Whereas, a petition was filed in this court on the 26th day of September, 1947, against Wilbert C. Hamilton, alleged bankrupt above named, praying

that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Hugh L. Dickson, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Wilbert C. Hamilton shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ BEN HARRISON,
District Judge.

[Endorsed]: Filed Sept. 29, 1947. [9]

[Title of District Court and Cause.]

ANSWER TO INVOLUNTARY PETITION IN BANKRUPTCY

To the Honorable Judges of the District Court of the United States, Southern District of California, Central Division:

Comes now Wilbert C. Hamilton and for himself alone and none other files this his answer to the Creditors' Petition filed herein and in that respect denies and alleges:

I.

Answering paragraph I thereof, admits that said Wilbert C. Hamilton is a resident of the City of Los

Angeles, County of Los Angeles, State of California, with residence at 1067 West 83rd Street; denies that said Wilbert C. Hamilton is now or at any time ever was a copartner with Willard E. Brunson or Deon Bunch or either thereof, or ever engaged in any transaction or trading as a copartner with either said Brunson or Bunch or under the firm name of Brunson & Bunch or any other firm name or name of any copartnership as a partner therein or thereof; and further denies that Wilbert C. Hamilton ever made or entered into any copartnership or agreement for or of copartnership with either said Brunson or Bunch or both thereof or at all, [10] and further except as herein otherwise specified, admitted or denied, denies generally and specifically each and every of the allegations of paragraph 1 of said Petition;

II.

Answering paragraph 2, said Wilbert C. Hamilton admits that he has a place of business at 639 South Spring Street in the City of Los Angeles, California, and has maintained said place of business continuously for more than one year last past; admits that a copartnership composed of said Brunson and Bunch is engaged in business at 610 South Broadway in the City of Los Angeles, California; that except as herein specifically admitted denies generally and specifically each and every of the allegations of said paragraph 2;

III.

Answering paragraph 3, said Wilbert C. Hamilton admits that he has not conducted any business

under any assumed trade name or designation, but that he has no information or belief in the matter sufficient for him otherwise to answer the allegations of said paragraph 3, and therefore on that ground except as herein specifically admitted, denies generally and specifically each and every of the allegations of said paragraph 3;

IV.

Answering paragraph 4, said Wilbert C. Hamilton denies that he is indebted in the sum of $1,000 or any sum of money; that he has no information or belief in the matter sufficient to enable him to specifically or otherwise deny the allegations of paragraph 4, and therefore, except as herein specifically admitted, denies generally and specifically each and every of the allegations of paragraph 4;

V.

Answering paragraph 7 thereof, the said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer and therefore on that ground denies the allegations of paragraph 7;

VI.

Answering paragraph 8, said Wilbert C. Hamilton denies that the petitioners or any or either of them is a creditor of Wilbert C. Hamilton or that they have any claim, secured or otherwise, against him, either in the aggregate of $500 or more than $500 or any sum of money or at all, or either in any fixed or liquidated amount;

Denies that George B. McClyman has any claim against the said Wilbert C. Hamilton in the amount of $20,359 or any sum of money or at all, or that said McClyman ever lent the sum of $20,359 or any sum of money to the said Wilbert C. Hamilton, either during the nine-month period immediately preceding the filing of this complaint or at any time or at all;

Denies that Elizabeth Spencer Sauers has any claim against the said Wilbert C. Hamilton in the amount of $4,701.52 or any sum of money or at all, or that said Elizabeth Spencer Sauers ever lent the sum of $4,701.52 or any sum of money to the said Wilbert C. Hamilton either during the nine-month period immediately preceding the filing of this complaint or at any time or at all;

Denies that Elisabeth Brau has any claim against the said Wilbert C. Hamilton in the amount of $18,030.90 or any sum of money or at all, or that said Elisabeth Brau ever lent the sum of $18,030.90 or any sum of money to the said Wilbert C. Hamilton either during the nine-month period immediately preceding the filing of this complaint or at any time or at all;

That said Wilbert C. Hamilton has no information or belief in the matter with reference to the allegations of said paragraph 8 in [12] respect to claims against said alleged copartnership of said Brunson and Bunch, and therefore basing his denial on that ground denies the allegations of said paragraph 8 and further, except as herein other-

wise specifically denied or admitted in respect to said Wilbert C. Hamilton, denies generally and specifically each and every of the allegations of said paragraph 8;

VII.

Answering paragraph 9, said Wilbert C. Hamilton denies that he is bankrupt or ever committed any act of bankruptcy within four months next preceding the filing of said Petition, or on the 7th day of August, 1947, or at all; denies that he ever transferred the sum of $1475.00 or any sum of money to John P. Strutzel or to Anthony M. Cioffi or to Aircraft Stamping Company, or said Strutzel and Cioffi, doing business as said Aircraft Stamping Company, or to any thereof or at all, or that either said Strutzel or Cioffi or said Aircraft Stamping Company or any thereof are or ever were creditors of said Hamilton; and further denies that said Hamilton is insolvent or that any alleged transfer was made while the said Wilbert C. Hamilton was insolvent or at all; that the said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer the allegations of paragraph 9 as to said copartnership of said Brunson and Bunch, and therefore on that ground denies generally and specifically the allegations of said paragraph 9 and further, except as hereinbefore specifically admitted or denied, said Wilbert C. Hamilton otherwise denies generally and specifically each and every the allegations of said paragraph 9;

VIII.

Answering paragraph 10, said Wilbert C. Hamilton denies that he is bankrupt or ever committed any act of bankruptcy within four months next preceding the filing of said Petition, or on the 3rd day of July, [13] 1947, or at all;

Denies that he ever transferred the sum of $600 or any sum of money to George B. McClyman, or that said McClyman is or ever was one of the creditors of said Hamilton; and further denies that said Hamilton is bankrupt or that any alleged transfer was made while said Wilbert C. Hamilton was insolvent or at all;

That said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer the allegations of paragraph 10 as to said copartnership of said Brunson and Bunch, and therefore on that ground denies generally and specifically the allegations of said paragraph 10, and further, except as herein specifically admitted or denied, said Wilbert C. Hamilton otherwise denies generally and specifically each, every and all the allegations contained in said paragraph 10;

IX.

Answering paragraph 11, said Wilbert C. Hamilton denies that he is bankrupt or ever committed any act of bankruptcy within four months next preceding the filing of said Petition, or on the 17th day of July, 1947, or at all;

Denies that he ever transferred the sum of $2,100 or any sum of money to L. L. Farris and Company,

or that L. L. Farris and Company is or ever was one of the creditors of said Wilbert C. Hamilton; and further denies that said Wilbert C. Hamilton is bankrupt or that any alleged transfer was made while said Wilbert C. Hamilton was insolvent or at all;

That said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer the allegations of paragraph 11 as to said copartnership of said Brunson and Bunch, and therefore on that ground denies generally and specifically the allegations of said paragraph 11, and further, except as herein specifically admitted or denied, said Wilbert C. Hamilton otherwise denies generally [14] and specifically each and every the allegations of said paragraph 11;

X.

Answering paragraph 12, said Wilbert C. Hamilton denies that he is bankrupt or ever committed any act of bankruptcy within four months next preceding the filing of said Petition, or on the 7th day of July, 1947, or at all;

Denies that he ever transferred the sum of $89.28 or any sum of money to Elisabeth Brau, or that said Elisabeth Brau is or ever was one of the creditors of said Wilbert C. Hamilton; and further denies that said Wilbert C. Hamilton is bankrupt or that any alleged transfer was made while said Wilbert C. Hamilton was insolvent or at all;

That said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him

to answer the allegations of paragraph 12 as to said copartnership of said Brunson and Bunch, and therefore on that ground denies generally and specifically the allegations of said paragraph 12, and further, except as herein specifically admitted or denied, said Wilbert C. Hamilton otherwise denies generally and specifically each and every the allegations of said paragraph 12;

XI.

Answering paragraph 13, said Wilbert C. Hamilton denies that he is bankrupt or ever committed any act of bankruptcy within four months next preceding the filing of said Petition, or on the 8th day of July, 1947, or at all;

Denies that he ever transferred the sum of $53.93 or any sum of money to Elisabeth Brau, or that said Elisabeth Brau is or ever was one of the creditors of said Wilbert C. Hamilton; and further denies that said Wilbert C. Hamilton is bankrupt or that any alleged transfer was made while said Wilbert C. Hamilton was insolvent or at all;

That said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer the allegations of [15] paragraph 13 as to said copartnership of said Brunson and Bunch, and therefore on that ground denies generally and specifically the allegations of said paragraph 13, and further, except as herein specifically admitted or denied, said Wilbert C. Hamilton otherwise denies generally and specifically each and every the allegations of said paragraph 13;

XII.

Answering paragraph 14, said Wilbert C. Hamilton denies that he is bankrupt or ever committed any act of bankruptcy within four months next preceding the filing of said Petition, or on the 16th day of June, 1947, or at all;

Denies that he ever transferred the sum of $12,000 or any sum of money to Fletcher Baughn, or that said Fletcher Baughn is or ever was one of the creditors of said Wilbert C. Hamilton; and further denies that said Wilbert C. Hamilton is bankrupt or that any alleged transfer was made while said Wilbert C. Hamilton was insolvent or at all;

That said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer the allegations of paragraph 14 as to said copartnership of said Brunson and Bunch, and therefore on that ground denies generally and specifically the allegations of said paragraph 14, and further, except as herein specifically admitted or denied, said Wilbert C. Hamilton otherwise denies generally and specifically each and every the allegations of said paragraph 14;

XIII.

Answering paragraph 15, said Wilbert C. Hamilton denies that he is bankrupt or ever committed any act of bankruptcy within four months next preceding the filing of said Petition, or on the 16th day of June, 1947, or at all;

Denies that he ever transferred the sum of $5,000 or any sum of money to Nellie Fath, or that said

Nellie Fath is or ever was one of the creditors of said Wilbert C. Hamilton; and further denies that said [16] Wilbert C. Hamilton is bankrupt or that any alleged transfer was made while said Wilbert C. Hamilton was insolvent or at all;

That said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer the allegations of paragraph 15 as to said copartnership of said Brunson and Bunch, and therefore on that ground denies generally and specifically the allegations of said paragraph 15, and further, except as herein specifically admitted or denied, said Wilbert C. Hamilton otherwise denies generally and specifically each and every the allegations of said paragraph 15.

Wherefore, the said Wilbert C. Hamilton prays judgment that in respect to said Wilbert C. Hamilton said Creditors' Petition be denied, and that said proceedings be dismissed.

Dated: This 2nd day of October, 1947, at Los Angeles, California.

/s/ SYLVAN Y. ALLEN,
Attorney for Wilbert C.
Hamilton. [17]

State of California,
County of Los Angeles—ss.

Wilbert C. Hamilton, being by me first duly sworn, deposes and says: that he is the Alleged Bankrupt in the above-entitled action; that he has read the foregoing Answer to Involuntary Petition

in Bankruptcy—Creditor's Petition, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ WILBERT C. HAMILTON.

Subscribed and sworn to before me this 2nd day of October, 1947.

[Seal] /s/ VIRGINIA R. KERR,
Notary Public in and for said County and State of California.

[Endorsed]: Filed Oct. 2, 1947.

[Title of District Court and Cause.]

PETITION AND ORDER TO FILE FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

To the Honorable the Judges of the District Court of the United States, Southern District of California, Central Division:

Come Now George B. McClyman, Elizabeth Spencer Sauers, Elizabeth Brau, and Willis N. Urie, petitioning creditors, by their attorneys, Lane & Casey, and H. H. Slate, and allege that heretofore Creditors' Petition was filed and since the filing thereof, it appears that the petitioners have ascertained additional facts which should be brought before the

Court, and have prepared a first amended petition, and now ask and petition the Court to forthwith and without notice make and issue an Order permitting the filing of said First Amended Petition.

LANE & CASEY, and
H. H. SLATE,
Attorneys for Petitioners.

By /s/ H. H. SLATE.

It Is So Ordered.

/s/ HUGH L. DICKSON,
Referee.

Filed Oct. 27, 1947. (Referee's Clerk.)

[Endorsed]: Filed Oct. 28, 1947. [20]

[Title of District Court and Cause.]

FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

Creditors' Petition

To the Honorable the Judges of the District Court of the United States, Southern District of California, Central Division:

The petition of George B. McClyman, 639 South Spring Street, Los Angeles, California; and Elizabeth Spencer Sauers, 1034 Kendall Drive, San Gabriel, California; and Elizabeth Brau, 221 Belmont Avenue, Los Angeles, California; and John W. Mires, 2059 West 84th Place, Los Angeles, Cali-

fornia; and Willis N. Urie, 1324 Tenth Street, Santa Monica, California, respectfully represents:

(1) Wilbert C. Hamilton, of 1067 West 83rd Street, City and County of Los Angeles, State of California, and Willard E. Brunson of 1183 Crenshaw Boulevard, City and County of Los Angeles, State of California, and Deon Bunch, 405 West Adams Boulevard, City and County of Los Angeles, State of California, are co-partners trading under the firm name of Brunson and Bunch, and your petitioners file this petition jointly against said partnership and the said Wilbert C. Hamilton, individually.

(2) The said partnership has had its principal place of business at 610 South Broadway, City and County of Los Angeles, State [21] of California, within the above judicial district, and the said Wilbert C. Hamilton has had his principal place of business at 639 South Spring Street, City and County of Los Angeles, State of California, within the above judicial district, both for the six months immediately preceding the filing of this petition.

(3) Within six years next immediately preceding the filing of this petition, neither said partnership nor said Wilbert C. Hamilton has been known or has conducted any business by or under any assumed, trade, or other names or designations, according to the information and belief of petitioners.

(4) The said partnership and the said Wilbert C. Hamilton each owes debts to the amount of One Thousand Dollars ($1,000.00) or over.

(5) The said Wilbert C. Hamilton is not a wage-earner or a farmer.

(6) The said partnership and the said Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch, and neither of them, have been or are engaged principally or at all as farmers, or in the tillage of the soil in agriculture or horticulture, and are not nor have they operated a banking, municipal, railroad, or building and loan business.

(7) The said partnership has not been dissolved, but business operations are not being continued.

(8) Your petitioners are creditors of said partnership and said Wilbert C. Hamilton, having unsecured claims against them, fixed as to liability and liquidated in amount, amounting in the aggregate to Five Hundred Dollars ($500.00) or over. The nature and amount of your petitioner's claims are as follows:

(a) The claim of your petitioner, George B. McClyman, is in the amount of Twenty Thousand Three Hundred Fifty-Nine Dollars ($20,359.00) for money lent by him to said partnership and the said Wilbert C. Hamilton during the nine months' period immediately [22] preceding the filing of this petition.

(b) The claim of your petitioner, Elizabeth Spencer Sauers, is in the amount of Four Thousand Seven Hundred One Dollars and 52 cents ($4,701.52), for money lent by her to said partnership and the said Wilbert C. Hamilton during

the nine months' period immediately preceding the filing of this petition.

(c) The claim of your petitioner, Elizabeth Brau, is in the amount of Eighteen Thousand Thirty Dollars and 90 cents ($18,030.90), for money lent by her to said partnership and the said Wilbert C. Hamilton during the nine months' period immediately preceding the filing of this petition.

(d) The claim of your petitioner, John W. Mires, is in the amount of One Thousand Dollars ($1,000.00), for money lent by him to said partnership and the said Wilbert C. Hamilton during the nine months' period immediately preceding the filing of this petition.

(e) The claim of your petitioner, Willis N. Urie, is in the amount of Five Thousand Dollars ($5,000.00) for money lent by him to said partnership and the said Wilbert C. Hamilton during the nine months' period immediately preceding the filing of this petition.

(9) The debts due to each of the claimants, the petitioning creditors herein, were, at the time of the filing of the original petition herein, and are now, past due, owing, and unpaid.

(10) Each of the petitioning creditors herein was an unsecured creditor at each of the times hereinafter alleged that the bankrupts transferred funds while insolvent.

(11) Within four months next immediately preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed

an act of bankruptcy, in that on the 7th day of August, 1947, they transferred the sum of One Thousand Four Hundred Seventy - Five Dollars ($1,475.00) to John P. Strutzel and Anthony M. Cioffi, doing business as "Aircraft Stamping Company," [23] 822 South Date Street, Alhambra, California, a co-partnership, and one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said John P. Strutzel and Anthony M. Cioffi, doing business as "Aircraft Stamping Company," over their other creditors. By said transfer the said creditor receiving said payment obtained a greater per cent of payment of his claim than did other creditors of the same class, including your petitioners.

(12) Within four months next immediately preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of Bankruptcy, in that on the third day of July, 1947, they transferred the sum of Six Hundred Dollars ($600.00) to George B. McClyman, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said George B. McClyman, over their other creditors. By said transfer the said creditor receiving said payment obtained a greater per cent of payment of his claim than did other creditors of the same class, including your petitioners.

(13) Within four months next immediately preceding the filing of this petition, the said partner-

ship and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 17th day of July, 1947, they transferred the sum of Two Thousand One Hundred Dollars ($2,100.00) to L. L. Farris and Company, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said L. L. Farris and Company over their other creditors. By said transfer the said creditor receiving said payment obtained a greater per cent of payment of his claim than did other creditors of the same class, including your petitioners.

(14) Within four months next immediately preceding the [24] filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 7th day of July, 1947, they transferred the sum of Eighty-Nine Dollars and 28 cents ($89.28) to Elizabeth Brau, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said Elizabeth Brau over their other creditors. By said transfer the said creditor receiving said payment obtained a greater per cent of payment of his claim than did other creditors of the same class, including your petitioners.

(15) Within four months next immediately preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed

an act of bankruptcy, in that on the 8th day of July, 1947, they transferred the sum of Fifty-three Dollars and 93 cents ($53.93) to Elizabeth Brau, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said Elizabeth Brau over their other creditors. By said transfer the said creditor receiving said payment obtained a greater per cent of payment of his claim than did other creditors of the same class, including your petitioners.

(16) Within four months next immediately preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 16th day of June, 1947, they transferred the sum of Twelve Thousand Dollars ($12,000.00) to Fletcher Baughn, one of their creditors. Said transfer was made while each alleged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said Fletcher Baughn over their other creditors. By said transfer the said creditor receiving said payment obtained a greater per cent of payment of his claim than did other creditors of the same class, including your petitioners. [25]

(17) Within four months next immediately preceding the filing of this petition, the said partnership and said Wilbert C. Hamilton each committed an act of bankruptcy, in that on the 16th day of June, 1947, they transferred the sum of Five Thousand Dollars ($5,000.00) to Nellie Fath, one of their creditors. Said transfer was made while each al-

leged bankrupt was insolvent, and while each had more than one creditor, and was made with intent to prefer the said Nellie Fath over their other creditors. By said transfer the said creditor receiving said payment obtained a greater per cent of payment of his claim than did other creditors of the same class, including your petitioners.

(18) At all the times herein mentioned and at the time of the filing of the original creditors' petition, and now, the partnership known as Brunson and Bunch, and each of the partners, Willard E. Brunson, Deon Bunch, and Wilbert C. Hamilton, were insolvent, and all of the assets and property of the partnership and of said individuals, in the aggregate, at its fair salable value or at its fair reasonable value, was and is insufficient to pay all of the just debts of the partnership.

(19) That within four months next immediately preceding the filing of this Petition, and on June 17, 1947, at Los Angeles, California, the said partnership and the said Wilbert C. Hamilton, with the intent to hinder, defraud, and delay their creditors, and each of them, transferred the sum of Ten Thousand Dollars ($10,000.00) without consideration, to The Mary E. Hamilton Trust, an alleged common law trust, wholly operated, controlled, and managed by Wilbert C. Hamilton. By said act, the creditors of the said alleged bankrupts herein, and each of them, were, in fact, hindered, delay and defrauded, and your petitioners were hindered, delayed and defrauded, and your petitioners were prevented from collecting their [26] respective just claims against

the said bankrupts, and each of them. The said transfer, on June 17, 1947, was made and done at a time when the said alleged bankrupts, and each of them, were insolvent. The said alleged bankrupts, and each of them, are now and have been for all of the four months immediately preceding the filing of this Petition, and were also on June 17, 1947, insolvent.

Wherefore, your petitioners pray that service of this petition, with a subpoena, may be made upon said partnership and the said Wilbert C. Hamilton, as provided in the Act of Congress relating to bankruptcy, and that said partnership and said Wilbert C. Hamilton, individually, may each be adjudged by the Court to be a bankrupt within the purview of said Act.

Dated this 23 day of October, 1947.

/s/ GEORGE B. McCLYMAN,
Petitioner.

/s/ ELIZABETH SPENCER SAUERS,
Petitioner.

/s/ ELISABETH BRAU,
Petitioner.

/s/ WILLIS N. URIE,
Petitioner.

LANE & CASEY and
H. H. SLATE,
Attorneys for Petitioners.

By /s/ H. H. SLATE. [27]

State of California,
County of Los Angeles—ss.

George B. McClyman, one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition, subscribed by him, are true to his knowledge, information and belief.

/s/ GEORGE B. McCLYMAN,
Petitioner.

Subscribed and sworn to before me this 23rd day of October, 1947.

[Seal] /s/ G. N. WILLIAMS,
Notary Public in and for Said County and State.

State of California,
County of Los Angeles—ss.

Elizabeth Spencer Sauers, one of the petitioners above named, does hereby make solemn oath that the statement contained in the foregoing petition, subscribed by her, are true to her knowledge, information and belief.

/s/ ELIZABETH SPENCER SAUERS,
Petitioner.

Subscribed and sworn to before me this 23rd day of October, 1947.

[Seal] /s/ G. N. WILLIAMS,
Notary Public in and for Said County and State. [28]

State of California,
County of Los Angeles—ss.

Elizabeth Brau, one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition, subscribed by her, are true to her knowledge, information and belief.

/s/ ELISABETH BRAU,
Petitioner.

Subscribed and sworn to before me this 23rd day of October, 1947.

[Seal] /s/ G. N. WILLIAMS,
Notary Public in and for Said County and State.

State of California,
County of Los Angeles—ss.

Willis N. Urie, one of the petitioners above named, does hereby make solemn oath that the statements contained in the foregoing petition, subscribed by him, are true to his knowledge, information and belief.

/s/ WILLIS N. URIE,
Petitioner.

Subscribed and sworn to before me this 24 day of October, 1947.

[Seal] /s/ H. H. SLATE,
Notary Public in and for Said County and State. [29]

[Title of District Court and Cause.]

ANSWER TO FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY, AND INTERROGATORIES WITH REQUEST THAT THEY BE ANSWERED UNDER OATH, i.e., BY EACH OF THE PETITIONING CREDITORS SEPARATELY

To the Honorable Judges of the District Court of the United States, Southern District of California, Central Division:

Comes now Wilbert C. Hamilton and for himself alone and none other files this his Answer, which is an answer in part, to the First Amended Involuntary Petition in Bankruptcy filed herein, and as to that part which is not answered interrogatories are annexed to be answered under oath by each petitioning creditor. Upon receipt of the answers to the interrogatories annexed this respondent will be in a position to answer as to the remaining allegations not now answered, and leave of Court to so do will be obtained.

I.

Answering paragraph (1) thereof, the said Wilbert C. Hamilton admits that he is a resident of the City of Los Angeles, County of Los Angeles, State of California, residing at 1067 West 83rd Street thereof, and denies that he is now or was at any time a copartner or member of a partnership known as Brunson and Bunch; [40]

II.

Further answering the allegations contained in paragraph (1) of the said First Amended Involuntary Petition, this respondent alleges that the said First Amended Involuntary Petition does not state facts sufficient and clear to establish the fact of partnership as alleged, nor upon what basis the petitioning creditors claim that this respondent is a member of the partnership as alleged, and the respondent requests that the petitioning creditors answer interrogatories 1 to 4 under oath, and said interrogatories when so answered under oath will enable this respondent to make proper answer and prepare his defense;

III.

Answering paragraph (2), said Wilbert C. Hamilton admits that he has a place of business at 639 South Spring Street in the City of Los Angeles, California, and has maintained said place of business continuously for more than one year last past; admits that a copartnership composed of said Brunson and Bunch is engaged in business at 610 South Broadway in the City of Los Angeles, California; that except as herein specifically admitted denies generally and specifically each and every of the allegations of said paragraph (2);

IV.

Answering paragraph (3), said Wilbert C. Hamilton admits that he has not conducted any business under any assumed trade name or designation,

but that he has no information or belief in the matter sufficient for him otherwise to answer the allegations of said paragraph (3), and therefore on that ground except as herein specifically admitted, denies generally and specifically each and every of the allegations of said paragraph (3); [41]

V.

Answering paragraph (4), said Wilbert C. Hamilton denies that he is indebted in the sum of $1,000 or any sum of money; that he has no information or belief in the matter sufficient to enable him to specifically or otherwise deny the allegations of paragraph (4), and therefore, except as herein specifically admitted, denies generally and specifically each and every of the allegations of paragraph (4);

VI.

Answering paragraph (7) thereof, the said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer and therefore on that ground denies the allegations of paragraph (7);

VII.

Further answering the allegations contained in paragraph (8) of the First Amended Involuntary Petition, this respondent alleges that the said First Amended Involuntary Petition does not state or contain allegations sufficiently definite and certain to inform this respondent that the petitioning creditors claim to be creditors of the respondent individually or creditors of the copartnership as alleged; nor is

this Involuntary Petition definite and certain as to the nature of the petitioning creditors' claims, whether they are based on written memoranda, nor the manner of creation and terms of payment if any; for these reasons this respondent requests that each petitioning creditor answer as regards his alleged claim or debt the interrogatories annexed which pertain to the matters referred to in paragraph (8) of the Amended Petition. The said interrogatories, when answered under oath, as requested, will enable this respondent to properly answer the allegations contained in paragraph (8) of the First Amended Petition and to prepare this respondent's defense thereto; [42]

VIII.

Answering paragraphs (9) to (17) inclusive, this respondent states that the allegations contained in said paragraphs are not sufficiently definite and certain to enable this respondent to properly and intelligently answer same, in that the said allegations do not contain statements to the effect that the petitioning creditors claim that the creditors alleged to have received preferences were creditors of this respondent individually or creditors of the copartnership as alleged, and also whether the alleged payments charged as preferences were made by the respondent individually or by the copartnership as alleged. For these reasons this respondent requests that each petitioning creditor answer under oath the interrogatories annexed hereto which pertain to the subject matters referred to in the said

paragraphs contained in the First Amended Petition. The answers to the interrogatories given under oath will enable this respondent to properly and intelligently answer these allegations.

IX.

Answering paragraph (18), Wilbert C. Hamilton denies that he is insolvent or that he is or ever was a partner of Willard E. Brunson and Deon Bunch or either thereof, or either or both doing business under the partnership name of Brunson and Bunch; and further, denies generally and specifically each, every and all the allegations of said paragraph 18;

X.

Answering paragraph (19), Wilbert C. Hamilton denies that he transferred the sum of $10,000 or any sum of money either without consent or at all, to the Mary E. Hamilton Trust on June 17, 1947, or at any time or to hinder, delay or defraud any creditor or with intent to hinder or delay or defraud any creditor, but alleges the fact to be that the sum of $10,000 was withdrawn from the Betty-Barbara [43] Trust, Mary E. Hamilton, Trustee, together with an additional sum of $15,000, and all of same was transferred and delivered to the Mary E. Hamilton Trust and that the $10,000 heretofore withdrawn and paid to the Betty-Barbara Trust, Mary E. Hamilton, Trustee, was paid to Brunson and Bunch on or about the 17th or 18th day of June, 1947, and that an additional sum of $15,000 was withdrawn from

the Betty-Barbara Trust and through the Mary E. Hamilton Trust was delivered to Brunson and Bunch. That no part of said $25,000 has been repaid and all of same is due, owing and unpaid from Brunson and Bunch and Willard E. Brunson and Deon Bunch, copartners, and the said Brunson and Bunch and said copartners are indebted to the said Mary E. Hamilton Trust in the said sum of $10,000; and further, that neither by said act of transferring said $10,000 or said $15,000 or said $25,000 to said Brunson and Bunch did the said Wilbert C. Hamilton hinder, delay or defraud any creditor;

And this answering respondent is informed and believes that each and every of the said petitioners knows the foregoing to be a true statement of the facts and that any allegation or averment to the contrary is false, fraudulent, malicious and untrue and is made without any or any probable cause and wholly for the purpose of injuring and maligning the said Wilbert C. Hamilton and causing him great and irreparable loss in his business and profession, and not otherwise; and the said respondent further denies each, every and all the allegations of said paragraph (19).

Wherefore, having first answered, this defendant prays the Court,

1. For judgment of dismissal in the event that the petitioning creditors shall fail to answer under oath each and every question contained in the interrogatories annexed hereto within the time prescribed by federal statute;

2. That judgment be entered in favor of this respondent on [44] creditors' Petition, and that the adjudication requested by the petitioning creditors be denied;

3. That the said proceedings as regards this respondent be dismissed;

4. That the petitioning creditors be ordered to pay this respondent's costs and reasonable attorney's fees, and that judgment be granted accordingly; and

5. For such other and further relief as this respondent shall be entitled in equity and in law, as the case may be.

/s/ SYLVAN Y. ALLEN,
Attorney for Respondent
Wilbert C. Hamilton.

Filed Nov. 26, 1947. (Referee's Clerk.)

[Endorsed]: Filed Nov. 26, 1947. [45]

[Title of District Court and Cause.]

ANSWER TO FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

To the Honorable Judges of the District Court of the United States, Southern District of California, Central Division:

Comes now Wilbert C. Hamilton and for himself alone and none other files this his Answer to the

First Amended Involuntary Petition in Bankruptcy filed herein, and in that respect denies and alleges:

I.

Answering paragraph (1) thereof, admits that said Wilbert C. Hamilton is a resident of the City of Los Angeles, County of Los Angeles, State of California, with residence at 1067 West 83rd Street; denies that said Wilbert C. Hamilton is now or at any time ever was a copartner with Willard E. Brunson or Deon Bunch or either thereof, or ever engaged in any transaction or trading as a copartner with either said Brunson or Bunch or under the firm name of Brunson & Bunch or any other firm name or name of any copartnership as a partner therein or thereof; and further denies that Wilbert C. Hamilton ever made or entered into any copartnership or agreement for or of copartnership with either said Brunson or Bunch or both thereof or at all [76] and further except as herein otherwise specified, admitted or denied, denies generally and specifically each and every of the allegations of paragraph 1 of said Petition;

II.

Answering paragraph 2, said Wilbert C. Hamilton admits that he has a place of business at 639 South Spring Street in the City of Los Angeles, California, and has maintained said place of business continuously for more than one year last past; admits that a copartnership composed of said Brunson and Bunch is engaged in business at 610 South

Broadway in the City of Los Angeles, California; that except as herein specifically admitted denies generally and specifically each and every of the allegations of said paragraph 2;

III.

Answering paragraph 3, said Wilbert C. Hamilton admits that he has not conducted any business under any assumed trade name or designation, but that he has no information or belief in the matter sufficient for him otherwise to answer the allegations of said paragraph 3, and therefore on that ground except as herein specifically admitted, denies generally and specifically each and every of the allegations of said paragraph 3;

IV.

Answering paragraph 4, said Wilbert C. Hamilton denies that he is indebted in the sum of $1,000 or any sum of money; that he has no information or belief in the matter sufficient to enable him to specifically or otherwise deny the allegations of paragraph 4, and therefore, except as herein specifically admitted, denies generally and specifically each and every of the allegations of paragraph 4; [77]

V.

Answering paragraph 7 thereof, the said Wilbert C. Hamilton has no information or belief in the matter sufficient to enable him to answer and therefore on that ground denies the allegations of paragraph 7;

VI.

Answering paragraph 8, said Wilbert C. Hamilton denies that the petitioners or any or either of them is a creditor of Wilbert C. Hamilton or that they have any claim, secured or otherwise, against him, either in the aggregate of $500 or more than $500 or any sum of money or at all, or either in any fixed or liquidated amount;

Denies that George B. McClyman has any claim against the said Wilbert C. Hamilton in the amount of $20,359 or any sum of money or at all, or that said McClyman ever lent the sum of $20,359 or any sum of money to the said Wilbert C. Hamilton, either during the nine-month period immediately preceding the filing of the Petition herein or at any time or at all;

Denies that Elizabeth Spencer Sauers has any claim against the said Wilbert C. Hamilton in the amount of $4,701.52 or any sum of money or at all, or that said Elizabeth Spencer Sauers ever lent the sum of $4,701.52 or any sum of money to the said Wilbert C. Hamilton either during the nine-month period immediately preceding the filing of this complaint or at any time or at all;

Denies that Elizabeth Brau has any claim against the said Wilbert C. Hamilton in the amount of $18,-030.90 or any sum of money or at all, or that said Elizabeth Brau ever lent the sum of $18,030.90 or any sum of money to the said Wilbert C. Hamilton either during the nine-month period immediately preceding the filing of the Petition herein, or at any time or at all;

Denies that Willis N. Urie has any claim against the said Wilbert C. Hamilton in the amount of $5,000.00 or any sum of money or [78] at all, or that said Willis N. Urie ever lent the sum of $5,000.00 or any sum of money to the said Wilbert C. Hamilton either during the nine-month period immediately preceding the filing of the Petition herein or at any time or at all;

That said Wilbert C. Hamilton has no information or belief in the matter with reference to the allegations of said paragraph 8 in respect to claims against said alleged copartnership of said Brunson and Bunch, and therefore basing his denial on that ground denies the allegations of said paragraph 8 and further, except as herein otherwise specifically denied or admitted in respect to said Wilbert C. Hamilton, denies generally and specifically each and every the allegations of said paragraph 8;

VII.

Answering paragraph 9, Wilbert C. Hamilton denies that any debt is due from him to any of the alleged claimants mentioned or referred to therein, or that any such alleged debt is now or ever was due or past due or owing or unpaid, and denies that any such debt ever existed;

VIII.

Answering paragraph 10, Wilbert C. Hamilton denies that any said alleged petitioning creditors ever were creditors of Wilbert C. Hamilton, either unsecured or otherwise, at the times alleged or at

all, or that the said Wilbert C. Hamilton is now a bankrupt or at any time mentioned in said First Amended Petition ever was a bankrupt or that the said Wilbert C. Hamilton at any said times was or now is insolvent or transferred any fund or funds as in said paragraph 10 alleged;

IX.

Answering paragraph 11, Wilbert C. Hamilton denies that he [79] ever transferred $1,475.00 or any sum of money to John P. Strutzel or Anthony M. Cioffi or both of them, or either or both of them doing business as Aircraft Stamping Co., or doing business under any other designation, and denies generally and specifically each and every the allegations of said paragraph 11;

X.

Answering paragraph 12, Wilbert C. Hamilton denies that he ever transferred the sum of $600 or any portion thereof to George B. McClyman, either on the 3rd day or any day of July, 1947, or had any transaction with the said George B. McClyman as in said First Amended Petition alleged or at all; and otherwise denies generally and specifically each, every and all the allegations of said paragraph 12;

XI.

Answering paragraph 13, Wilbert C. Hamilton denies that he ever transferred $2,100.00 or any sum of money to L. L. Farris & Co. or ever engaged in any transaction touching upon any mat-

ter, cause or thing in respect to the matters alleged in the First Amended Petition regarding L. L. Farris & Co.; and further denies generally and specifically each, every and all the allegations of said paragraph 13;

XII.

Answering paragraph 14, Wilbert C. Hamilton denies that he ever transferred $89.28 or any sum of money to Elizabeth Brau, or ever engaged in any transaction with the said Elizabeth Brau touching or pertaining to the matters alleged in paragraph 14 of the First Amended Petition; and further denies generally and specifically each, every and all the allegations of said paragraph 14;

XIII.

Answering paragraph 15, Wilbert C. Hamilton denies that he ever transferred $53.93 or any sum of money to Elizabeth Brau, or ever engaged in any transaction with the said Elizabeth Brau touching or pertaining to the matters alleged in paragraph 15 of the First Amended Petition; and further denies generally and specifically each, every and all the allegations of said paragraph 15;

XIV.

Answering paragraph 16, Wilbert C. Hamilton denies that he transferred $12,000 or any sum of money to Fletcher Baughn, either as alleged or at all, and further, denies generally and specifically each, every and all the allegations of said paragraph 16;

XV.

Answering paragraph 17, Wilbert C. Hamilton denies that he transferred $5,000 or any sum of money to Nellie Fath, either as alleged or at all, and further, denies generally and specifically each, every and all the allegations of said paragraph 17;

XVI.

Answering paragraph 18, Wilbert C. Hamilton denies that he is insolvent or that he is or ever was a partner of Willard E. Brunson and Deon Bunch or either thereof, or either or both doing business under the partnership name of Brunson and Bunch; and further, denies generally and specifically each, every and all the allegations of said paragraph 18;

XVII.

Answering paragraph 19, Wilbert C. Hamilton denies that he transferred the sum of $10,000 or any sum of money either without consent or at all, to the Mary E. Hamilton Trust on June 17, 1947, or at any time or to hinder, delay or defraud any creditor or with [81] intent to hinder or delay or defraud any creditor, but alleges the fact to be that the sum of $10,000 was withdrawn from the Betty-Barbara Trust, Mary E. Hamilton, Trustee, together with an additional sum of $15,000, and all of same was transferred and delivered to the Mary E. Hamilton Trust and that the $10,000 heretofore withdrawn and paid to the Betty-Barbara Trust, Mary E. Hamilton, Trustee, was paid to Brunson and Bunch on or about the 17th or 18th day of June, 1947, and that an additional sum of $15,000 was

withdrawn from the Betty-Barbara Trust and through the Mary E. Hamilton Trust was delivered to Brunson and Bunch. That no part of said $25,000 has been repaid and all of same is due, owing and unpaid from Brunson and Bunch and Willard E. Brunson and Deon Bunch, copartners, and the said Brunson and Bunch and said copartners are indebted to the said Mary E. Hamilton Trust in the said sum of $10,000; and further, that neither by said act of transferring said $10,000 or said $15,000 or said $25,000 to said Brunson and Bunch did the said Wilbert C. Hamilton hinder, delay or defraud any creditor; and this answering respondent is informed and believes that each and every of the said petitioners knows the foregoing to be a true statement of the facts and that any allegation or averment to the contrary is false, fraudulent, malicious and untrue and is made without any or any probable cause and wholly for the purpose of injuring and maligning the said Wilbert C. Hamilton and causing him great and irreparable loss in his business and profession, and not otherwise; and the said Wilbert C. Hamilton further denies each, every and all the allegations of said paragraph 19.

XVIII.

That this Respondent has incurred and will incur expenses and costs and will be required to incur and pay additional sums of money for proper costs and for reasonable attorney's fees in this matter, and is entitled to Order and Judgment of this Court against [82] said petitioning creditors for the aggregate amount thereof.

Wherefore, this Respondent prays judgment as follows:

1. That judgment be entered in favor of this Respondent, Wilbert C. Hamilton, on creditors' Petition and First Amended Involuntary Petition filed herein, and that the adjudication prayed for by petitioning creditors be denied;

2. For judgment and dismissal as to Wilbert C. Hamilton, and that all proceedings herein with reference to said Wilbert C. Hamilton be dismissed and set aside;

3. That judgment and Order be made herein requiring petitioning creditors to pay all proper costs and expenses incurred or paid by Respondent, including Respondent's reasonable attorney's fees; and

4. That such other and further relief and orders be made as may appear to this Honorable Court meet and equitable in the premises.

/s/ SYLVAN Y. ALLEN,
Attorney for Respondent,
Wilbert C. Hamilton. [83]

State of California,
County of Los Angeles—ss.

Wilbert C. Hamilton, being by me first duly sworn, deposes and says: that he is the Respondent in the above-entitled action; that he has read the foregoing Answer to First Amended Involuntary Petition in Bankruptcy and knows the contents

thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ WILBERT C. HAMILTON.

Subscribed and sworn to before me this 16th day of December, 1947.

[Seal] /s/ VIRGINIA R. KERR,
Notary Public in and for said County and State of California.

Filed Dec. 17, 1947. (Referee's Clerk.)

[Endorsed]: Filed Dec. 19, 1947.

[Title of District Court and Cause.]

REQUEST FOR JURY TRIAL

To the Honorable Judges of the District Court of the United States, Southern District of California, Central Division:

Request for jury trial is made on behalf of the aforenamed Alleged Bankrupt, Wilbert C. Hamilton.

Dated: This 25th day of November, 1947.

/s/ SYLVAN Y. ALLEN,
Attorney for Alleged Bankrupt, Wilbert C. Hamilton.

Filed Nov. 26, 1947. (Referee's Clerk.)

[Endorsed]: Filed Nov. 26, 1947. [52]

[Title of District Court and Cause.]

INTERROGATORIES ANNEXED TO ANSWER OF RESPONDENT WILBERT C. HAMILTON TO THE FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

Each petitioning creditor is requested to answer under oath the following interrogatories which are annexed to the Answer of the respondent, Wilbert C. Hamilton, and in which answer the said respondent has requested that these interrogatories be separately answered under oath by each petitioning creditor:

1. When do you claim that the alleged copartnership between Wilbert C. Hamilton, Willard E. Brunson and Deon Bunch, trading under the name of Brunson and Bunch, originated?

2. When did you receive first notice of the existence of this copartnership with the personnel named in the first interrogatory and how did you receive this notice?

3. Was this notice in writing, and if so, please attach a copy of the said notice, and mark with an exhibit annexed to your answer?

4. Was the alleged partnership created by written articles of copartnership, signed and executed by the copartners, and if your answer is yes, please attach a copy of said articles of copartnership and

mark same an exhibit attached to your answer to this interrogatory? [46]

5. Do you claim to be a creditor of Wilbert C. Hamilton individually, and if your answer is yes, please state if the obligation is evidenced by written instrument or memorandum?

6. If your answer is by written instrument or memorandum, please attach a copy of said written instrument or memorandum to be marked as exhibits and annexed to your answer to this interrogatory.

7. If your claim is against the copartnership of Brunson and Bunch and not specifically Wilbert C. Hamilton, please state if the said claim is evidenced by written instrument or memorandum, and if so, please attach copies of said written instrument and/or memorandum, and mark the same exhibits annexed to your answer to this interrogatory.

8. Do you claim that John P. Strutzel and Anthony M. Cioffi, doing business as Aircraft Stamping Co. at the time of receiving the alleged payment of $1,475.00 received the said payment as creditors of Wilbert C. Hamilton individually or as creditors of Brunson and Bunch, a copartnership?

9. Do you claim that the said payment of $1,475.00 alleged to have been paid to the said John P. Strutzel and Anthony M. Cioffi, doing business as Aircraft Stamping Co., was made to them, by Wilbert C. Hamilton individually or by the partnership known as Brunson and Bunch?

10. Do you claim that George B. McClyman at the time of receiving the alleged payment of $600.00 received the said payment as creditor of Wilbert C. Hamilton individually or as creditor of Brunson and Bunch, a copartnership?

11. Do you claim that the said payment of $600.00 alleged to have been paid to the said George B. McClyman was made to him by Wilbert C. Hamilton individually or by the partnership known as Brunson and Bunch?

12. Do you claim that L. L. Farris & Co. at the time of receiving the alleged payment of $2,100.00 received the said payment [47] as creditor of Wilbert C. Hamilton individually or as creditor of Brunson and Bunch, a copartnership?

13. Do you claim that the said payment of $2,100.00 alleged to have been paid to the said L. L. Farris & Co. was made to it by Wilbert C. Hamilton individually or by the partnership known as Brunson and Bunch?

14. Do you claim that Elizabeth Brau at the time of receiving the alleged payment of $89.28 received the said payment as creditor of Wilbert C. Hamilton individually or as creditor of Brunson and Bunch, a copartnership?

15. Do you claim that the said payment of $89.28 alleged to have been paid to the said Elizabeth Brau was made to her by Wilbert C. Hamilton individually or by the partnership known as Brunson and Bunch?

16. Do you claim that Elizabeth Brau at the time of receiving the alleged payment of $53.93 received the said payment as creditor of Wilbert C. Hamilton individually or as creditor of Brunson and Bunch, a copartnership?

17. Do you claim that the said payment of $53.93 alleged to have been paid to the said Elizabeth Brau was made to her by Wilbert C. Hamilton individually or by the partnership known as Brunson and Bunch?

18. Do you claim that Fletcher Baughn at the time of receiving the alleged payment of $12,000.00 received the said payment as creditor of Wilbert C. Hamilton individually or as creditor of Brunson and Bunch, a copartnership?

19. Do you claim that the said payment of $12,000.00 alleged to have been paid to the said Fletcher Baughn was made to him by Wilbert C. Hamilton individually or by the partnership known as Brunson and Bunch?

20. Do you claim that Nellie Fath at the time of receiving the alleged payment of $5,000.00 received the said payment as creditor [48] of Wilbert C. Hamilton individually or as creditor of Brunson and Bunch, a copartnership?

21. Do you claim that the said payment of $5,000.00 alleged to have been paid to the said Nellie Fath was made to her by Wilbert C. Hamilton

individually or by the partnership known as Brunson and Bunch?

/s/ SYLVAN Y. ALLEN,
Attorney for Respondent,
Wilbert C. Hamilton. [49]

State of California,
County of Los Angeles—ss.

Wilbert C. Hamilton, being by me first duly sworn, deposes and says: that he is the Respondent in the above-entitled action; that he has read the foregoing Answer to First Amended Involuntary Petition in Bankruptcy, and Interrogatories With Request That They Be Answered Under Oath, i.e., By Each of the Petitioning Creditors Separately, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

/s/ WILBERT C. HAMILTON.

Subscribed and sworn to before me this 25th day of November, 1947.

[Seal] /s/ VIRGINIA R. KERR,
Notary Public in and for said County and State of California.

[Title of District Court and Cause.]

ORDER TO ANSWER INTERROGATORIES

The petitioning creditors are ordered to answer the interrogatories annexed to the Answer of Respondent, Wilbert C. Hamilton, within 14 days from date of service.

/s/ HUGH DICKSON,
Referee.

Filed Nov. 26, 1947. (Referee's Clerk.)

[Endorsed]: Filed Nov. 26, 1947. [51]

[Title of District Court and Cause.]

ANSWER OF ELIZABETH BRAU TO INTERROGATORIES ATTACHED TO ANSWER TO FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

To the Honorable Judges of the District Court of the United States, the Southern District of California, Central Division:

Comes now Elizabeth Brau, and in compliance with the order of the Honorable Hugh L. Dickson, Referee in Bankruptcy, made on the 26th day of November, 1947, herein presents her answer to said interrogatories:

State of California,
County of Los Angeles—ss.

Elizabeth Brau, being first duly sworn, deposes and on her oath says: That she is one and the

same person as the Elizabeth Brau, a petitioning creditor in the above-entitled and numbered action; that she herewith answers the interrogatories attached to the answer to First Amended Involuntary Petition on file herein, as follows, to wit:

1. On or about the 15th day of December, 1946, at which time, and at numerous times thereafter, Wilbert C. Hamilton advised Affiant and various and sundry other persons that any and all monies to be advanced said co-partnership were to be advanced and secured by and through the said Wilbert C. Hamilton; that the said statements were orally made by the said Wilbert C. Hamilton to Affiant and to various and sundry other persons on or about the said 15th day of December, 1946, and many times subsequent thereto.

2. On or about the 2nd day of January, 1947, orally, from one G. N. [56] Williams, at the special instance and request of the said Wilbert C. Hamilton.

3. No.

4. The said co-partnership was created by an oral understanding and agreement by and between each of the partners composing said co-partnership, namely, Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch; and that subsequent thereto, the exact date thereof being at this time unknown to Affiant, the said co-partnership was evidenced by written articles of co-partnership, duly executed and signed by each of the said co-partners; that

the said written articles of co-partnership are in the possession of and under the control of the said Wilbert C. Hamilton, and your Affiant is therefore unable to attach the same as an exhibit to these answers to interrogatories.

5. Yes. Affiant's obligation is evidenced both by a written memorandum and an oral understanding, in that at the special instance and request of the said Wilbert C. Hamilton, the said G. N. Williams represented to Affiant that the said Wilbert C. Hamilton was well acquainted with and personally knew the said Willard E. Brunson and the said Deon Bunch; and that Affiant's money was advanced to the said co-partnership and to the said Wilbert C. Hamilton, individually, in reliance upon the truth of said representations; that subsequent thereto, and on or about the first day of April, 1947, the said Wilbert C. Hamilton orally represented to Affiant that he, the said Hamilton, had in his possession good and valuable and sufficient securities to insure Affiant's money against loss; that in truth and in fact, said securities were at all times valueless and that the said Hamilton knew, or by the exercise of ordinary, prudent, and reasonable caution, should have known, that the said securities were in fact valueless and worthless; that Affiant further relied upon the said representations, and relying thereon, permitted Affiant's money to remain with the said co-partnership and the said Hamilton for the purposes for which said money was originally so advanced by Affiant; that

Affiant's said money was so advanced as aforesaid for the specific purpose of the purchase and sale of commodities and for no other purpose, while in truth and in fact the said Wilbert C. Hamilton and the said co-partnership deliberately and knowingly used and misapplied Affiant's said money to and for purposes wholly foreign to the purposes [57] as aforesaid.

6. Said written instrument is evidenced by a photostatic copy thereof, attached hereto, and marked "Exhibit A."

7. Your Affiant's claim is against the co-partnership known as Brunson and Bunch, and composed of Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch, and against Wilbert C. Hamilton, individually.

8. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

9. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

10. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

11. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

12. The co-partnership known as Brunson and Bunch.

13. The co-partnership known as Brunson and Bunch.

14. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

15. Both Wilbert C. Hamilton, individually, and

the co-partnership known as Brunson and Bunch.

16. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

17. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

18. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

19. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

20. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

21. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

/s/ ELISABETH BRAU,
Affiant. [58]

Subscribed and sworn to before me this 1st day of December, 1947.

[Seal] G. N. WILLIAMS,
Notary Public in and for the County of Los Angeles, State of California.
My Commission Expires Nov. 15, 1951.

Filed Dec. 10, 1947. (Referee's Clerk.)

[Endorsed]: Filed Dec. 12, 1947. [59]

[Title of District Court and Cause.]

ANSWER OF ELIZABETH SPENCER SAUERS TO INTERROGATORIES ATTACHED TO ANSWER TO FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

To the Honorable Judges of the District Court of the United States, the Southern District of California, Central Division:

Comes now Elizabeth Spencer Sauers, and in compliance with the order of the Honorable Hugh L. Dickson, Referee in Bankruptcy, made on the 26th day of November, 1947, herein presents her answer to said interrogatories:

State of California,
County of Los Angeles—ss.

Elizabeth Spencer Sauers, being first duly sworn, deposes and on her oath says: That she is one and the same person as the Elizabeth Spencer Sauers, a petitioning creditor in the above-entitled and numbered action; that she herewith answers the interrogatories attached to the answer to First Amended Involuntary Petition on file herein, as follows, to wit:

1. On or about the 15th day of December, 1946, at which time, and at numerous times thereafter, Wilbert C. Hamilton advised Affiant and various and sundry other persons that any and all monies to be advanced said co-partnership were to be

advanced and secured by and through the said Wilbert C. Hamilton; that the said statements were orally made by the said Wilbert C. Hamilton to Affiant and to various and sundry other persons on or about the said 15th day of December, 1946, and many times subsequent thereto.

2. On or about the 2nd day of January, 1947, orally, from one G. N. [60] Williams, at the special instance and request of the said Wilbert C. Hamilton.

3. No.

4. The said co-partnership was created by an oral understanding and agreement by and between each of the partners composing said co-partnership, namely, Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch; and that subsequently thereto, the exact date thereof being at this time unknown to Affiant, the said co-partnership was evidenced by written articles of co-partnership, duly executed and signed by each of the said co-partners; that the said written articles of co-partnership are in the possession of and under the control of the said Wilbert C. Hamilton, and your Affiant is therefore unable to attach the same as an exhibit to these interrogatories.

5. Yes. Affiant's obligation is evidenced both by a written memorandum and an oral understanding, in that at the special instance and request of the said Wilbert C. Hamilton, the said G. N. Williams represented to Affiant that the said Wil-

bert C. Hamilton was well acquainted with and personally knew the said Willard E. Brunson and the said Deon Bunch; and that Affiant's money was advanced to the said co-partnership and to the said Wilbert C. Hamilton, individually, in reliance upon the truth of said representations; that subsequent thereto, and on or about the first day of April, 1947, the said Wilbert C. Hamilton orally represented to Affiant that he, the said Hamilton, had in his possession good and valuable and sufficient securities to insure Affiant's money against loss; that in truth and in fact, said securities were at all times worthless and that the said Hamilton knew, or by the exercise of ordinary, prudent, and reasonable caution, should have known, that the said securities were in fact valueless and worthless; that Affiant further relied upon the said representations, and relying thereon, permitted Affiant's money to remain with the said co-partnership and the said Hamilton for the purposes for which said money was originally so advanced by Affiant; that Affiant's said money was so advanced as aforesaid for the specific purpose of the purchase and sale of commodities and for no other purpose, while in truth and in fact the said Wilbert C. Hamilton and the said co-partnership deliberately and knowingly used the misapplied Affiant's said money to and for purposes wholly foreign to the purposes [61] as aforesaid.

6. Said written instrument is evidenced by a

photostatic copy thereof, attached hereto, and marked "Exhibit A."

7. Your Affiant's claim is against the co-partnership known as Brunson and Bunch, and composed of Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch, and against Wilbert C. Hamilton, individually.

8. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

9. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

10. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

11. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

12. The co-partnership known as Brunson and Bunch.

13. The co-partnership known as Brunson and Bunch.

14. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

15. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

16. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

17. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

18. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

19. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

20. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

21. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

/s/ ELIZABETH SPENCER SAUERS,
Affiant. [62]

Subscribed and sworn to before me this 13th day of December, 1947.

[Seal] /s/ G. N. WILLIAMS,
Notary Public in and for County of Los Angeles, State of California.

My Commission Expires Nov. 15, 1951.

Filed Dec. 15, 1947. (Referee's Clerk.)

[Endorsed]: Filed Dec. 19, 1947. [63]

RESPONDENT'S EXHIBIT B

March 28, 1947.

Mr. G. N. Williams
639 South Spring Street
Los Angeles 14

Dear Sir:

I hand you herewith as my attorney and agent the sum of $2,500.00, which I hereby authorize you to

invest for me and particularly to use this money in joint ventures with Brunson & Bunch, a copartnership, commodity brokers, in the financing of purchases and sales of commodities.

I deposit with you the aforementioned sum of money for a period of six months from the date hereof, and for subsequent periods of six months each, unless and until I serve upon you 60 days' written notice for the return of this money to me. This written notice, if any, I shall serve upon you 60 days prior to the ending of any six-month period. In the event that it becomes possible for this money to be returned to me prior to the expiration of such a notice, if any, I understand that the money will be returned to me. Otherwise the return shall be made at the end of the period as herein specified.

I deposit this money with you under and upon the following understanding: (1) that you as my attorney and agent will in turn transfer this money to Brunson & Bunch for the purpose of investing the same in the purchase and sale of commodities, (2) that I will be paid monthly on or before the 5th day of the following month 2% of the amount of this deposit, and that at the end of each quarter 40% of the profits of all transactions in which this money is used shall be paid me, deducting therefrom the 2% theretofor paid during such quarter. It is understood that the payments of 2% shall be advances upon profits to be earned and to be offset against the total of the profits earned during such quarter.

Your acknowledgment on a duplicate copy of this letter shall be considered the terms and conditions under which this money is placed with you for my benefit.

Very truly yours,

/s/ ELIZABETH SPENCER SAUERS,
1034 Kendall Dr.,
San Gabriel, Calif.

G. H. Williams March 28, 1947.

Received the sum of $2500.00 this 28 day of March, 1947, which I agree to use in accordance with the above terms and conditions and understandings.

/s/ G. N. WILLIAMS.

[Clerk's exhibit identification attached.]

[Entered]: June 30, 1948.

[Title of District Court and Cause.]

ANSWER OF WILLIS N. URIE TO INTERROGATORIES ATTACHED TO ANSWER TO FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

To the Honorable Judges of the District Court of the United States, the Southern District of California, Central Division:

Comes now Willis N. Urie, and in compliance with the order of the Honorable Hugh L. Dickson, Ref-

eree in Bankruptcy, made on the 26th day of November, 1947, herein presents his answer to said interrogatories:

State of California,
County of Los Angeles—ss.

Willis N. Urie, being first duly sworn, deposes, and on his oath says: That he is one and the same person as the Willis N. Urie, a petitioning creditor in the above-entitled and numbered action; that he herewith answers the interrogatories attached to the answer to First Amended Involuntary Petition on file herein, as follows, to wit:

1. On or about the 1st day of March, 1947, at which time, and at numerous times thereafter, Wilbert C. Hamilton advised Affiant and various and sundry other persons that any and all monies to be advanced said co-partnership were to be advanced and secured by and through the said Wilbert C. Hamilton; that the said statements were orally made by the said Wilbert C. Hamilton to Affiant and to various and sundry other persons on or about the said 1st day of March, 1947, and many times subsequent thereto.

2. On or about the 15th day of March, 1947, directly and orally from the [66] said Wilbert C. Hamilton.

3. No.

4. The said co-partnership was created by an oral understanding and agreement by and between

each of the partners composing said co-partnership, namely, Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch; and that subsequent thereto, the exact date thereof being at this time unknown to Affiant, the said co-partnership was evidenced by written articles of co-partnership, duly executed and signed by each of the said co-partners; that the said written articles of co-partnership are in the possession of and under the control of the said Wilbert C. Hamilton, and your Affiant is therefore unable to attach the same as an exhibit to these answers to interrogatories.

5. Yes. Affiant's obligation is evidence both by a written memorandum and an oral understanding, in that the said Wilbert C. Hamilton represented to Affiant that the said Wilbert C. Hamilton was well acquainted with and personally knew the said Willard E. Brunson and the said Deon Bunch; and that Affiant's money was advanced to the said co-partnership and to the said Wilbert C. Hamilton, individually, in reliance upon the truth of said representations; that subsequent thereto, and on or about the first day of April, 1947, the said Wilbert C. Hamilton orally represented to Affiant that he, the said Hamilton, had in his possession good and valuable and sufficient securities to insure Affiant's money against loss; that in truth and in fact, said securities were at all times valueless and that the said Hamilton knew, or by the exercise of ordinary, prudent, and reasonable caution, should have known, that the said securities were in fact

valueless and worthless; that Affiant further relied upon the said representations, and relying thereon, permitted Affiant's money to remain with the said co-partnership and the said Hamilton for the purposes for which said money was originally so advanced by Affiant; that Affiant's said money was so advanced as aforesaid for the specific purpose of the purchase and sale of commodities and for no other purpose, while in truth and in fact the said Wilbert C. Hamilton and the said co-partnership deliberately and knowingly used and misapplied Affiant's said money to and for purposes wholly foreign to the purposes as aforesaid. [67]

6. Said written instrument is evidenced by a photostatic copy thereof, attached hereto, and marked "Exhibit A."

7. Your Affiant's claim is against the co-partnership known as Brunson and Bunch, and composed of Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch, and against Wilbert C. Hamilton, individually.

8. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

9. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

10. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

11. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

12. The co-partnership known as Brunson and Bunch.

13. The co-partnership known as Brunson and Bunch.

14. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

15. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

16. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

17. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

18. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

19. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

20. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

21. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

/s/ WILLIS N. URIE,
Affiant. [68]

Subscribed and sworn to before me this 11th day of December, 1947.

[Seal] /s/ LEONARD W. AASLAND,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Feb. 13, 1951.

Filed Dec. 15, 1947.

[Endorsed]: Filed Dec. 19, 1947. [69]

EXHIBIT A

Date: March 28, 1947.

Mr. Wilbert C. Hamilton
639 South Spring Street
Suite 506
Los Angeles 14

Dear Sir:

I hand you herewith as my agent the sum of $5000.00 which you are authorized to invest for me and particularly to use the same in joint ventures with Brunson & Bunch, a copartnership, in the financing of various commodities.

You are to have this money for a period of six months from date, and thereafter until given sixty days' notice in writing for the return of the same.

This money is deposited with you with the understanding that the money deposited with you is to draw 40% of the profits of all transactions of a joint

venture on which the money is used, and that I am to have a guarantee of earnings from the joint venture of 2% per month minimum, payable on or before the 5th day of each and every month commencing May 5, 1947.

Your acknowledgment on a duplicate copy of this letter shall be considered the terms and conditions under which this money is placed with you for our benefit.

Very sincerely yours,

/s/ WILLIS N. URIE,

Address: 1454 Lincoln Blvd., Santa Monica, Calif.
Phone: Santa Monica 52257.

encl. 1

Received the sum of $5000.00, which is to be used in accordance with the above terms and conditions.

/s/ WILBERT C. HAMILTON.

[Title of District Court and Cause.]

ANSWER OF GEORGE B. McCLYMAN TO INTERROGATORIES ATTACHED TO ANSWER TO FIRST AMENDED INVOLUNTARY PETITION IN BANKRUPTCY

To the Honorable Judges of the District Court of the United States, the Southern District of California, Central Division:

Comes now George B. McClyman, and in compliance with the order of the Honorable Hugh L. Dickson, Referee in Bankruptcy, made on the 26th day

of November, 1947, herein presents *her* answer to said interrogatories:

State of California,
County of Los Angeles—ss.

George B. McClyman, being first duly sworn, deposes and on his oath says: That he is one and the same person as the George B. McClyman, a petitioning creditor in the above-entitled and numbered action; that he herewith answers the interrogatories attached to the answer to First Amended Involuntary Petition on file herein, as follows, to wit:

1. On or about the 2nd day of January, 1947, at which time, and at numerous times thereafter, Wilbert C. Hamilton advised Affiant and various and sundry other persons that any and all monies to be advanced said co-partnership were to be advanced and secured by and through the said Wilbert C. Hamilton; that the said statements were orally made by the said Wilbert C. Hamilton to Affiant and to various and sundry other persons on or about the 2nd day of January, 1947, and many times subsequent thereto.

2. On or about the 2nd day of January, 1947, orally, directly from the [71] said Wilbert C. Hamilton.

3. No.

4. The said co-partnership was created by an oral understanding and agreement by and between each of the partners composing said co-partnership,

namely, Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch, and that subsequent thereto, the exact date thereof being at this time unknown to Affiant, the said co-partnership was evidenced by written articles of co-partnership, duly executed and signed by each of the said co-partners; that the said written articles of co-partnership are in the possession of and under the control of the said Wilbert C. Hamilton, and your Affiant is therefore unable to attach the same as an exhibit to these answers to interrogatories.

5. Yes. Affiant's obligation is evidenced by both written memorandums and an oral understanding, in that the said Wilbert C. Hamilton represented to Affiant that the said Hamilton was well acquainted with and personally knew the said Willard E. Brunson, and the said Deon Bunch, and that Affiant's money was advanced to the said co-partnership and to the said Wilbert C. Hamilton, individually, in reliance upon the truth of said representations; that subsequent thereto, and on or about the first day of April, 1947, the said Wilbert C. Hamilton, orally, represented to Affiant that he, the said Hamilton, had in his possession good and valuable and sufficient securities to insure Affiant's money against loss; that in truth and in fact, said securities were at all times valueless and that the said Hamilton knew, or by the exercise of ordinary, prudent, and reasonable caution, should have known, that the said securities were in fact valueless and worthless; that Affiant further relied upon the said representation, and relying thereon, permitted Affi-

ant's money to remain with the said co-partnership and the said Hamilton for the purposes for which said money was originally so advanced by Affiant; that Affiant's said money was so advanced as aforesaid for the specific purpose of the purchase and sale of commodities and for no other purpose, while in truth and in fact the said Wilbert C. Hamilton and the said co-partnership deliberately and knowingly used and misapplied Affiant's said money to and for purposes wholly foreign to the purposes as aforesaid. [72]

6. Said written instruments are evidenced by photostatic copies thereof, attached hereto, and marked "Exhibit A."

7. Your Affiant's claim is against the co-partnership known as Brunson and Bunch, and composed of Wilbert C. Hamilton, Willard E. Brunson, and Deon Bunch, and against Wilbert C. Hamilton, individually.

8. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

9. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

10. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

11. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

12. The co-partnership known as Brunson and Bunch.

13. The co-partnership known as Brunson and Bunch.

14. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

15. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

16. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

17. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

18. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

19. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

20. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

21. Both Wilbert C. Hamilton, individually, and the co-partnership known as Brunson and Bunch.

/s/ GEORGE B. McCLYMAN,
Affiant. [73]

Subscribed and sworn to before me this 11 day of December, 1947.

[Seal] /s/ H. H. SLATE,
Notary Public in and for Said County and State.

Filed Dec. 15, 1947. (Referee's Clerk.)

[Endorsed]: Filed Dec. 19, 1947. [74]

Wilbert C. Hamilton
Attorney at Law
639 South Spring Street
Los Angeles 14
TUcker 7178

January 9, 1947.

Mr. George B. McClyman
639 South Spring Street
Suite 1115
Los Angeles 14, California

Dear Mr. McClyman:

This will acknowledge receipt of the sum of $1,000 by check made payable to myself. It is understood that I am to deposit this check in the Investors' Trust in the Canadian Bank of Commerce, of which Trust I am the sole Trustee. This money is to be used in financing brokers, etc., on contracts for wire, nails, plaster, various building materials and other commodities. Out of the net profits the brokers receive 50%, while I as Trustee receive 10%, and 40% of the profits goes to the Trust. This 40% is divided in accordance with the interest of each person in the Trust.

Upon serving written notice upon me of your demand for your principal, the same will be returned to you sixty days after said demand is received. An accounting will be made monthly to the investors, showing the amount invested, the earnings of the Trust, the amount collected, and the amount outstanding.

I trust that we will be able to make you a very substantial profit upon these deals. I reserve the right to return your full investment at any time I see fit to do so. The same will not otherwise be returned except upon 60 days' notice. I trust this is your understanding. If not, please let me know immediately.

Very sincerely yours,

/s/ WILBERT C. HAMILTON.

WCH:vk

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

The above-entitled matter came on regularly for hearing in Department 5 of the above-entitled Court, Judge Leon R. Yankwich presiding, the formal hearings taking place on these dates, to wit: June 29, 1948; June 30, 1948; July 1, 1948; September 7, 1948; September 8, 1948; September 9, 1948. Glenn A. Lane and H. H. Slate, attorneys at law, appeared on behalf of the petitioning creditors; Sylvan Y. Allen, J. D. Willard and Ernest R. Utley, attorneys at law, appeared on behalf of the respondent, Wilbert C. Hamilton; and Wyman G. Reynolds, attorney at law, appeared on behalf of Willard E. Brunson and Deon Bunch, a co-partnership, doing business as Brunson & Bunch.

I.

Evidence, both oral and documentary, was introduced on behalf of the petitioning creditors and evidence, oral and documentary, was introduced in contravention thereto on behalf of the respondent, Wilbert C. Hamilton.

II.

The matter having been submitted to the Court for its consideration and [124] decision and the Court being fully advised in the premises now finds the facts as follows:

a. That it is not true as alleged in the First Amended Involuntary Petition "that Wilbert C. Hamilton of 1067 West 83rd Street, City and County of Los Angeles, State of California, was a co-partner with Willard E. Brunson and Deon Bunch in the operation and conduct of a business trading under the firm name of Brunson & Bunch; and that it is true as alleged by the respondent, Wilbert C. Hamilton, in his answer, that the said Wilbert C. Hamilton is not a co-partner of Willard E. Brunson and Deon Bunch in the firm of Brunson & Bunch; and that the said Wilbert C. Hamilton was never associated with Willard E. Brunson and Deon Bunch in any co-partnership relationship of any kind or nature whatsoever.

b. It is true that the said respondent, Wilbert C. Hamilton, has had his principal place of business at 639 South Spring Street, City and County of Los Angeles, State of California, within the above judicial district during the six (6) months imme-

diately preceding the filing of the original Petition.

c. It is true that the said Wilbert C. Hamilton, respondent, is not a wage earner or a farmer.

d. It is not true that the petitioners are creditors of the respondent, Wilbert C. Hamilton.

e. The Court finds that the petitioner, George B. McClyman, did not lend to the respondent, Wilbert C. Hamilton, the sum of Twenty Thousand Three Hundred Fifty-Nine Dollars ($20.359.00) or any amount whatsoever during the nine (9) months period immediately preceding the filing of the petition, and the Court finds further that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, George B. McClyman, in any amount whatsoever.

f. The Court finds that the petitioner, Elizabeth Spencer Sauers, did not lend to the respondent, Wilbert C. Hamilton, the sum of Four Thousand Seven Hundred One and 52/100 Dollars ($4,701.52) or any amount whatsoever during the nine (9) months period immediately preceding the filing of the petition, and the Court finds further that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Elizabeth Spencer Sauers, in any amount whatsoever. [125]

g. The Court finds that the petitioner, Elizabeth Brau, did not lend to the respondent, Wilbert C. Hamilton, the sum of Eighteen Thousand Thirty and 90/100 Dollars ($18,030.90) or any amount whatsoever during the nine (9) months period immediately preceding the filing of the petition, and

the Court finds further that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Elizabeth Brau, in any amount whatsoever.

h. The Court finds that the petitioner, Willis N. Urie, did not lend to the respondent, Wilbert C. Hamilton, the sum of Five Thousand Dollars ($5,000.00) or any amount whatsoever during the nine (9) months period immediately preceding the filing of the petition, and the Court finds further that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Willis N. Urie, in any amount whatsoever.

i. It is not true that the respondent, Wilbert C. Hamilton, committed any of the acts of bankruptcy which are alleged and set out in the Amended Complaint. The Court finds that the respondent, Wilbert C. Hamilton, is in no way responsible for the actions of the members of the co-partnership of Brunson & Bunch, to wit: Willard E. Brunson and Deon Bunch, in regards to the commission by the said co-partners of any of the acts of bankruptcy alleged in the Amended Complaint. The Court makes no specific finding at this time as to whether any of the acts of bankruptcy set out in the Amended Complaint were actually committed by the said co-partners. That question was not an issue in this hearing.

j. It is not true that at the time of the alleged commissions of acts of bankruptcy by the true co-partners, Willard E. Brunson and Deon Bunch, that the respondent, Wilbert C. Hamilton, was in-

solvent. The Court makes no finding at this time as to the solvency and the financial condition of the co-partnership and the true co-partners, Willard E. Brunson and Deon Bunch, of the partnership known as Brunson & Bunch at the times when the alleged acts of bankruptcy were purportedly committed by the co-partnership of Brunson & Bunch. Those matters were not of issue at the present hearing.

k. The Court finds that the dealings between the respondent, Wilbert C. Hamilton, and the partnership known as Brunson & Bunch consisting of the co-partners [126] as hereinbefore set out were governed by agreements entered into by the respondent, Wilbert C. Hamilton, and the partnership, whereby, in consideration of the respondent's furnishing money belonging to his clients or to trusts over which he had control, a definite percentage of the profits were promised. Each transaction was the subject of a special agreement. No other representations were made by the respondent, Wilbert C. Hamilton, to any of the clients. Nor was any obligation assumed by him for the successful culmination of the investment or the payment of the profits guaranteed. The clients knew that the profits to be derived from the enterprise were to be divided, so as to allow the respondent, Wilbert C. Hamilton, a profit for acting as the intermediary between them and the partnership. The accounts of the clients were kept in the books of the partnership, and the profits which the respondent, Wilbert

C. Hamilton, received—10 per cent—were separate and distinct from the profits of the partnership. They were so entered upon whatever books he kept. No control was exercised by him over the conduct of the affairs of the partnership. All that the respondent, Wilbert C. Hamilton, had was the promise of a certain percentage of the profits, the amount of which depended on whether the money invested belonged to a trust in which he had an interest, or belonged entirely to clients.

1. The Court finds that the relationship between the respondent, Wilbert C. Hamilton, and the partnership of Brunson & Bunch had none of the indicia of a partnership; that at most there existed a series of separate dealings of the joint venture type.

m. The Court finds that the respondent, Wilbert C. Hamilton, committed no act or acts which would show acts of estoppel warranting the Court in declaring the respondent, Wilbert C. Hamilton, to be a general partner.

n. The Court finds as to the respondent, Wilbert C. Hamilton, individually, that the evidence fails to show his insolvency, individually, as defined by the Bankruptcy Act of 1938.

o. The Court finds that the petitioning creditors do not have claims fixed as to liability or liquidated as to amount as to the respondent, Wilbert C. Hamilton. [127]

Conclusions of Law

As conclusions of law from the foregoing findings of fact, the Court concludes:

I.

That the respondent, Wilbert C. Hamilton, is not a member of the co-partnership of the firm name of Brunson & Bunch and should not be joined with Willard E. Brunson and Deon Bunch in a bankruptcy proceeding against the said co-partnership.

II.

That the respondent, Wilbert C. Hamilton, is not indebted in any way to any of the petitioning creditors nor to any creditors of Brunson & Bunch, a co-partnership, by reason of any partnership status of said respondent in said partnership.

III.

That the respondent, Wilbert C. Hamilton, did not commit any acts of bankruptcy nor did he commit any acts which would subject him to proceeding under the United States Bankruptcy Act.

IV.

That the respondent, Wilbert C. Hamilton, is not insolvent as defined by the Bankruptcy Act of 1938.

V.

That the petitioning creditors and each of them shall take nothing by their involuntary petition in Bankruptcy against the respondent, Wilbert C. Hamilton, either as an alleged member of the partnership of Brunson & Bunch or individually.

VI.

That said petitioning creditors do not qualify as to the respondent, Wilbert C. Hamilton, as creditors having claims fixed as to liability and liquidated as to amount as provided in Section 59B of the bankruptcy act.

VII.

That the said involuntary petition in Bankruptcy should, on the merits, be dismissed as to the respondent, Wilbert C. Hamilton, both as an alleged member of the [128] partnership of Brunson & Bunch and individually.

VIII.

That the respondent, Wilbert C. Hamilton, is entitled to a judgment against the petitioning creditors for the respondent's costs necessarily incurred and expended.

Done in Open Court This 30th Day of September, 1948.

/s/ LEON R. YANKWICH,

Judge of the District Court of the United States, Southern District of California, Central Division. [129]

Received copy of the within Proposed Finding of Facts and Admissions of Law this 27th day of September, 1948.

/s/ H. H. SLATE.

[Endorsed]: Filed Sept. 30, 1948. [130]

In the District Court of the United States, Southern District of California, Central Division

No. 45310-Y In Bankruptcy

In the Matter of:

WILBERT C. HAMILTON, Individually, and the Partnership Known as BRUNSON & BUNCH, Composed of WILLARD E. BRUNSON and DEON BUNCH, and the Said WILBERT C. HAMILTON,

Alleged Bankrupts.

JUDGMENT

This cause having been brought on for trial before the honorable Leon R. Yankwich, Judge of the above-entitled Court, on the 29th day of June, 1948, and the jury having been duly waived, and the trial having *proceeding* to a conclusion on the 9th day of September, 1948, wherein Glenn A. Lane and H. H. Slate, attorneys at law, appeared on behalf of the petitioning creditors; Sylvan Y. Allen, J. D. Willard, and Ernest R. Utley, attorneys at law, appeared on behalf of the respondent, Wilbert C. Hamilton, and Wyman G. Reynolds, attorney at law, appeared on behalf of Willard E. Brunson and Deon Bunch, a co-partnership, doing business as Brunson & Bunch, and the Court having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith:

Now, Therefore, by reason of the law and the findings aforesaid:

It Is Hereby Ordered, Adjudged and Decreed:

I.

That on the merits the respondent, Wilbert C. Hamilton, have judgment in his favor and the petitioners take nothing by their involuntary petition in bankruptcy against the respondent either as a member of the partnership of Brunson & Bunch or individually.

II.

That the said involuntary petition in bankruptcy be and the same is [131] hereby dismissed as to the respondent, Wilbert C. Hamilton, both as a member of the partnership of Brunson & Bunch and individually.

III.

The respondent shall have judgment against the petitioners for the respondent's costs herein taxed at $302.78.

Dated this 30th day of September, 1948.

/s/ LEON R. YANKWICH,

Judge of the District Court of the United States, Southern District of California, Central Division.

Judgment entered Sept. 30, 1948.

Docketed Sept. 30, 1948, Book 53, Page 72. [132]

Received copy of the within Proposed Judgment this 27th day of September, 1948.

/s/ H. H. SLATE.

[Endorsed]: Filed Sept. 30, 1948. [133]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL AND TO VACATE AND SET ASIDE JUDGMENT

Come now the petitioning creditors in the above-entitled matter and move for a new trial of the above-entitled cause, heretofore tried before the Honorable Leon R. Yankwich, Judge of the above-entitled Court, on the 29th day of June, 1948, and concluded on the 9th day of September, 1948, and move the above-entitled Court to vacate and set aside the judgment heretofore made and entered in the above-entitled cause on the 30th day of September, 1948, upon the following grounds, which grounds are hereby relied upon by the petitioning creditors in making this motion for new trial and motion to vacate and set aside said judgment, to wit:

(1) Irregularity in the proceedings of the court, by which the petitioning creditors were prevented from having a fair trial;

(2) Irregularity in the orders of the court, by which the petitioning creditors were prevented from having a fair trial;

(3) Irregularity in the proceedings of the court, and abuse of discretion by the court, by which the petitioning creditors were prevented from having a fair trial; [134]

(4) Irregularity in the proceedings of the adverse party, namely, Wilbert C. Hamilton, and his

attorneys, by which the petitioning creditors were prevented from having a fair trial;

(5) Accident and/or surprise, which ordinary prudence could not have guarded against by which the petitioning creditors were prevented from having a fair trial;

(6) Newly-discovered evidence, material for the petitioning creditors, which could not with reasonable diligence have been discovered and produced at the trial by the petitioning creditors;

(7) Insufficiency of the evidence to justify the judgment of the Court, and insufficiency of the evidence to justify the orders and decisions of the Court.

(8) Errors in law occurring at the trial.

* * * *

That the particular errors in law occurring at the trial and which are relied upon by the petitioning creditors in making this motion for new trial are as follows:

(A) That order and ruling by the court that the official court reporter of said Court was the court's own reporter, and that the Court need not and would not have the said reporter take down or report the Court's remarks which were directed to counsel for the petitioning creditors and to the petitioning creditors, and to the act and ruling and order of the Court, instructing the said reporter not to take down the remarks of the Court made

during a portion of the trial of said cause, and the act and order and instruction of the Court determining that only certain portions of the proceeding would be reported by the official reporter, and that other portions of the proceeding, particularly the remarks of the Court directed to counsel for petitioning creditors, and directed to the petitioning creditors should not be taken down and reported by the official court reporter.

(B) That order of the court denying the motion of the attorneys for petitioning creditors, whereby the said attorneys for petitioning creditors moved the Court to instruct the official court reporter of the above-entitled [135] Court to take down all of the proceedings that transpired during the trial of said cause, and particularly the Court's remarks made during the trial of said cause, and which remarks were directed to the petitioning creditors and to the counsel for petitioning creditors.

(C) That ruling and order of the Court, repeatedly made and reiterated during the trial of said cause, that the only issue before the Court on the hearing and trial of said matter and cause was the one and sole issue of whether or not the respondent, Wilbert C. Hamilton, was a partner in the firm of Brunson & Bunch; that thereafter and contrary to the Court's ruling, and despite said ruling, the Court ruled and determined by his findings of fact and conclusions of law that the petitioning creditors are not creditors of the respond-

ent; that the petitioning creditors, nor either of them, did not lend any sum of money whatever to the said respondent during the nine months' period immediately preceding the filing of the petition in bankruptcy, and that the said respondent is not indebted to the petitioning creditors, or either of them, in any amount whatsoever; that the respondent is in no way responsible for the actions of the members of the co-partnership of Brunson & Bunch, in regard to the commission by the co-partners of any of the acts of bankruptcy alleged in the Amended Petition (Complaint); that each transaction between the respondent and the firm of Brunson & Bunch was the subject of a special agreement; that no representations were made by the respondent to the creditors of the said co-partnership, other than each transaction was governed by an agreement between the said respondent and the said partnership, whereby in consideration of the respondent's furnishing money belonging to his clients or to trusts over which he had control, the said partnership promised the said respondent a definite percentage of the profits; that no obligation was assumed by the said respondent for the successful culmination of the investment, or the payment of the profits guaranteed; that the clients knew that the profits to be derived from the enterprise were to be divided, so as to allow the respondent a profit for acting as the intermediary between them and the partnership; that the accounts of the clients were kept in the books of the partnership, and the profits which the respondent received, amounting

to ten per cent, were separate and distinct from the profits of the [136] partnership; that the said respondent entered such profits upon "whatever books he kept"; that no control was exercised by him over the conduct of the affairs of the partnership; and that all that the respondent had was the promise of a certain percentage of the profits, the amount of which depended on whether the money invested belonged to a trust in which he had an interest, or belonged entirely to clients.

(D) That ruling and order of the Court, repeatedly made and reiterated during the trial of said cause, excluding any and all evidence offered to show fraud on the part of respondent Wilbert C. Hamilton, committed against petitioning creditors and other creditors of the firm of Brunson & Bunch.

(E) That ruling and order of the Court (denying the motion of the attorneys for petitioning creditors, to compel the production by the respondent of his checks and other records relating to transactions between the said respondent and creditors of the firm of Brunson & Bunch, and more particularly, that certain check drawn by the respondent upon his Investors' Trust bank account in the Canadian Bank of Commerce, and made payable to one Thomas P. Campbell, in the approximate sum of $82.00, and that certain check drawn by the respondent upon his Investors' Trust bank account in the Canadian Bank of Commerce, and made payable to the Rollaway Equipment Company in the approxi-

mate sum of $4,000.00, which checks were admittedly in the possession of the said respondent.

(F) The ruling and order of the Court, as set forth in the findings of fact, that Wyman G. Reynolds, attorney at law, appeared at the trial of the within matter on behalf of Willard E. Brunson and Deon Bunch, a co-partnership, doing business as Brunson & Bunch.

That the particulars where in petitioning creditors allege the evidence to be insufficient to support the findings of fact and decision and judgment of the Court based thereon are as follows:

(1) That the respondent never associated with Willard E. Brunson and Deon Bunch in any co-partnership relationship of any kind or nature whatsoever.

(2) That the petitioners are not creditors of the respondent. [137]

(3) That none of the petitioning creditors lent any sum of money to the respondent during the nine months' period immediately preceding the filing of the petition, and that the respondent is not indebted to the petitioner, or either or any of them, in any amount.

(4) That the respondent is in no way responsible for the actions of the members of the co-partnership of Brunson & Bunch, to wit: Willard E. Brunson, and Deon Bunch, in regard to the commission by the said co-partners of any of the acts of bankruptcy alleged in the amended petition (complaint).

(5) That each transaction between the respondent and the partnership known as Brunson & Bunch was the subject of a special agreement, and that no representations were made by the respondent to any of the petitioning creditors or other creditors of the co-partnership, except that the said Hamilton was to furnish the said co-partnership money belonging to his clients or to trusts over which he had control, and that in consideration therefor, a definite percentage of the profits were promised respondent.

(6) That no obligation was assumed by the respondent for the successful culmination of the investment or the payment of the profits guarantees.

(7) That the clients knew that the profits to be derived from the enterprise were to be divided, so as to allow the respondent a profit for acting as the intermediary between them and the partnership.

(8) That the accounts of the clients were kept in the books of the partnership.

(9) That the profits which the respondent received (ten per cent) were separate and distinct from the profits of the partnership.

(10) That the profits received by the said respondent were so entered upon "whatever books he kept."

(11) That no control was exercised by the respondent over the conduct of the affairs of the partnership.

(12) That "all the respondent had was the promise of a certain percentage of the profits, the amount of which depended on whether the [138] money invested belonged to a trust in which he had an interest, or belonged entirely to clients."

(13) That the relationship between the respondent and the partnership of Brunson & Bunch had none of the indicia of a partnership, and that at most there existed a series of separate dealings of the joint venture type.

(14) That the respondent committed no act or acts which would show acts of estoppel warranting the court in declaring the respondent to be a general partner.

(15) That the respondent is not insolvent individually as defined by the Bankruptcy Act of 1938.

(16) That the petitioning creditors do not have claims fixed as to liability or liquidated as to amount as to the respondent Wilbert C. Hamilton.

That the reason why the evidence is insufficient to support the specifications and particulars hereinbefore set forth, numbered (1) through (16), inclusive, is the reason heretofore specified as an error of law, to wit, more particularly, the ruling made by the court and repeated throughout the proceedings and trial of said cause, that the only issue before the court, and the sole issue upon which the court would permit the petitioning creditors to offer any evidence was the issue whether or not the respondent, Wilbert C. Hamilton, was a partner

in the firm of Brunson & Bunch; and the further rulings made repeatedly by the court during the proceedings and the trial of the said cause, excluding any and all evidence offered to show fraud committed by the respondent, Hamilton, against the petitioning creditors and other creditors of the partnership of Brunson & Bunch.

That this motion is based upon and will be heard upon the pleadings and records and papers and documents on file in the above-entitled matter, and upon the minutes of the court, including not only the clerk's minutes, but any and all notes and memoranda which may have been kept by the Judge, and also the reporter's transcript of his shorthand notes, and the affidavits to be filed herewith, and upon this written motion. [139]

Dated this 11th day of October, 1948.

GLENN A. LANE and
H. H. SLATE,
Attorneys for Petitioning
Creditors.

By /s/ GLENN A. LANE. [140]

Points and Authorities

A Motion for New Trial May Be Granted by the Court After Judgment Upon the Following Grounds, Among Others:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or abuse of discretion by which the losing party was prevented from having a fair trial.

(2) Accident or surprise which ordinary prudence could not have guarded against.

(3) Newly-discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

(4) Insufficiency of the evidence to justify the verdict or other decision.

(5) Error in law occurring at the trial.

Rule 17—Local Rules, U. S. District Court, Southern District of California, Coulston vs. U. S., 51 Fed. 2178.

Rule 59—Federal Rules of Civil Procedure. Little vs. U. S., 73 Fed. 2 861.

A Motion to Set Aside, or Vacate, or Modify, or Alter, a Judgment May Be Granted by the Court in Its Discretion:

Rule 59—Federal Rules of Civil Procedure. Boaz vs. Mutual Life Insurance Company of New York, 146 Fed. 2 321. [141]

Received copy of the within motion October 11, 1948.

/s/ S. Y. ALLEN,
Attorney for Respondent.

[Endorsed]: Filed Oct. 12, 1948. [142]

[Title of District Court and Cause.]

AFFIDAVITS OF GLENN A. LANE, G. N. WILLIAMS, H. H. SLATE AND GEORGE B. McCLYMAN, IN SUPPORT OF MOTIONS FOR NEW TRIAL AND TO SET ASIDE AND VACATE JUDGMENT

State of California,
County of Los Angeles—ss.

Glenn A. Lane, being first duly sworn, deposes and says:

That Affiant is a citizen of the United States and of the State of California, over the age of twenty-one years, and at all times herein mentioned has been and now is an attorney at law, duly licensed to practice and practicing his profession in all of the courts of the State of California, and duly licensed to practice and practicing his profession in the U. S. District Court, in and for the Southern District of California;

That at all times mentioned herein Affiant has been and now is one of the attorneys of record for the petitioning creditors in the above-entitled matter; that during the trial of the issues raised by the answer of the respondent, Wilbert C. Hamilton, to the First Amended Involuntary Petition in Bankruptcy, before the Honorable Leon R. Yankwich, Judge presiding, and particularly on the [143] 30th day of June, 1948, at about the hour of 12:40 p.m., the following matters and things transpired, and the following statements were made, to wit:

That at about the hour aforesaid, and while the Honorable Leon R. Yankwich was presiding in the trial of the issues of said case, the said Honorable Leon R. Yankwich stated that the court was then adjourning for the usual noon recess; that counsel should prepare themselves for night sessions to try said case, because the Court was scheduled to leave for San Francisco, California, to try other matters, at the conclusion of the next day, to wit, July 1, 1948, and that the Court was going to finish the trial of the issues then pending before the Court in the above-entitled matter, within the period of three days, to wit, June 29, June 30, and July 1, 1948, which he had allotted to said case, and that if it was necessary to stay over for night sessions, the Court was giving counsel fair warning at that time that the Court would still see that the case was finished within that time;

That the Court further stated that if said case was not completed at the conclusion of the next day, that the Court would declare a mistrial, and would send the case back for trial before some other Judge;

That the Court thereupon reiterated its remarks that the case would have to be completed within the period of three days' total time allotted by him to the case, and that if it was not completed by the end of the next day, he would declare a mistrial; that he, the Court, had set aside three days for the case, and that that was all the time that was going to be allotted to the case; that there was no reason

why said matter could not be completed within the said three days, and that counsel could prepare themselves for night sessions;

That the Court further stated that the only issue before the Court was the simple question of determining whether or not the [144] respondent, Wilbert C. Hamilton, was a partner in the firm of Brunson & Bunch, and that the case was going to be completed within the said three days, or the Court would declare a mistrial;

That Affiant thereupon stated to the Court that "Your Honor, if that is the decision of the Court, you might just as well declare a mistrial at this time, because this case cannot be completed by tomorrow night, and in our opinion, the trial of this case will require at least four weeks."

That thereupon the said Court stated that this case was going to be completed within the three days' time allotted to it, and that "there is no reason why the simple question of whether or not Hamilton is a partner should consume any more time than three days," and that the Court was not going to declare any mistrial; and that counsel could come back at 2:00 p.m. and the case would proceed to trial and would be completed within the time allotted to it, that there was no reason why the case should consume four weeks, and the Court could not see how it could possibly consume four weeks;

That the Court thereupon stated, "You told me that this case would take only three days to try. When this case was set for hearing at the previous date, I said that I could continue it to this date, and

that it would have only three days, and you told me that you could try this case within three days." Affiant then stated to the Court, "If the Court please, the Court's statement is in error, because I was not even present in Los Angeles County at the time that this matter was continued, and I have never at any time made any statement to the Court to that effect, and I was not present at any time when I could have made any such statement, and in fact, at the time that the Court claims I made such a statement, I was in San Francisco."

That the Court thereupon stated, "Well, somebody said it would take only three days." Affiant thereupon stated, "I was not [145] present at the time that the matter was continued, but it is my understanding that opposing counsel made the statement at that time as they have made on other occasions when I was present, that the case should be tried and completed in three days." The Court thereupon stated in effect that Affiant had deliberately misled the Court and that Affiant as "now attempting to mislead the Court" by his actions, and that the Court had no intention of granting a mistrial, now that the case had proceeded thus far, and that Affiant's "attempt to get the Court to grant a mistrial" was very unfair to the Court, and that the Court was "being imposed upon" by Affiant, and that if Affiant would "get down and try the case and quit trying to get into issues that have nothing to do with the case," that the case could be completed in three days and within the time allotted, and that the Court was refusing to declare a mis-

trial, and would not let the petitioning creditors and their attorneys "get out of trying this case, now that we have gone this far."

That Affiant thereupon noted that the court reporter was sitting at his desk and not taking down any of the remarks of the Court, or any of the proceedings that were then transpiring; that Affiant thereupon stated to the Court substantially as follows: "I notice that the reporter is not reporting these proceedings and is not taking down the statements of the Court, and I believe that these proceedings are very important, and that the remarks of the Court are very pertinent, and that the reporter should be reporting all of these proceedings, and I ask the Court to please instruct the reporter to take down all of the proceedings that are now transpiring, and to report the remarks of the court and any remarks that I make, or any other counsel in this proceeding." The Court thereupon stated, "He doesn't have to report these proceedings, and I am instructing him not to report what I am saying to you and what you are saying at this time. He is my reporter, and I will tell him [146] "what I want him to report, and you won't tell him what is to be reported, and you won't tell me what is to be reported. I am running this courtroom, and I will have my reporter report what I want him to report. and when I want to make remarks directed to you like I am doing, I don't want my reporter to take those down, and I am telling him right now not to take them down. I have a right to tell you what I think about the way you are trying the case, and I

have a right to talk to you about this case without having the reporter write down what I am saying. I will run this case in my own way, and I will run this courtroom in my own way, and you are not coming up here and telling me how to run my court and how to try cases. I have been trying cases for 21 years, and I know how to run my court, and you are not coming up here and telling me when and what my reporter will report on these proceedings and how I will try the case. My reporter will not report these remarks, and that is the way I am going to run my court."

Affiant thereupon stated, "I believe that your Honor's ruling is erroneous and that we are entitled to have all of the remarks of the court which are made in the conduct of the trial of the case, and particularly any remarks made in the open courtroom, reported by the reporter, and I assign the remarks just made by the Court as error, and I object to the Court's remarks and object to the Court's ruling, and again ask the Court to instruct the reporter to record all of the remarks made by the court or by me or by any other counsel in these proceedings, and I ask the Court to immediately instruct the reporter to take down what I am saying right now, and to report every remark hereafter made by the Court."

That the Court thereupon stated that the reporter would not report "any part of it," that the court was not in session, that he had taken a recess and that he would "run my trial the way I want to," and that the "attempt" on the part of Affiant to

get a [147] mistrial was unfair to the Court; that counsel "had misled the Court from the start," and that the Court wasn't trying "to force anybody to do what is impossible," but that the Court saw no reason why the case could not be completed within three days' total time, and that counsel could come back at 2:00 o'clock and put on his witness and proceed with the trial of the case, and that the case was definitely going to be completed by the end of the next day.

That the Court then stated, "You will come back into this courtroom at 2:00 p.m., and you will put on Mrs. Hamilton, the wife of Mr. Hamilton, as your next witness."

That Affiant thereupon stated, "You have already ordered me to put on Virginia Kerr at 2:00 p.m., and I find it difficult to understand how the Court expects me to put on two witnesses simultaneously."

That the Court thereupon stated, "You will put on the witness that I tell you to, and I tell you that when you come back at 2:00 o'clock, you will put on Mrs. Hamilton as your next witness." That Affiant thereupon stated, "You will recall that you have already ordered me to put on Virginia Kerr as my next witness when I return this afternoon." That the Court thereupon stated, "I am now ordering you to put on Mrs. Hamilton. Do you understand? You will put on Mrs. Hamilton when you return at 2:00 o'clock, and after I hear Mrs. Hamilton's testimony, I will decide whether you can keep these witnesses waiting in the courtroom. Do you under-

stand that you will put on Mrs. Hamilton when you return at 2:00 o'clock?" That Affiant thereupon stated, "I will decide that when I return here at 2:00 o'clock." The Court thereupon stated, "You will not decide anything of the kind. I am ordering you right now that you will put on Mrs. Hamilton at 2:00 o'clock, as your next witness."

That Affiant thereupon stated, "You have already ordered me to put on my best witness at 2:00 o'clock, and have further [148] ordered me to put on Virginia Kerr as my next witness at two o'clock. I will not be placed in the position of deciding who is my best witness, and we will wait until two o'clock to decide what witness will be put on next."

That the Court thereupon stated, "There is no reason why this case should take all the time you claim is necessary to try the case. It can be tried in the three days that I have allotted, and I am going to do my best to try the case in that time, and get it completed. There is no reason that I can understand why the case should take more than that time, and you never told me it would take any more than that. When I opened Court yesterday morning, you did not say anything about it."

That Affiant thereupon stated, "When you opened court yesterday morning, you did not ask anyone to give you an estimate of how long the case would take to try. You stated then that you did not want any opening statement from counsel, because this case was going to be completed in the three days that you had set aside for it, and that you were familiar

with the case from having read the pleadings, and you did not want any statement from counsel; that you wanted the petitioning creditors to put on their first witness and proceed with the trial of the case, and it was going to be completed in three days. At that point I discussed with associate counsel the fact that we could not complete the case in three days, and we were at a loss to know what to do in view of the fact that the Court had positively stated that you wanted no statements from anybody, but for us to put on our first witness. If the Court please, the fact is that we have an audit report which has just been completed within the last week, which is 224 pages long, of closely-spaced typing, and which we did not have until the last few days, and which was not in our possession or completed at the time that the case was continued to a later date for trial. We wish to cover the subject matter included in that [149] audit report, and we cannot possibly do so in three days, and in our opinion, it will require four weeks to properly try this case and cover the matters set forth in the audit report."

The Court thereupon stated, "The only issue before this Court is the question whether or not Wilbert Hamilton is a partner in the firm of Brunson & Bunch, and the further question whether or not he is insolvent. I don't see how the auditor's report could have anything to do with those issues, but anyway, I am familiar with auditors' reports and I know a lot about those things and if you will file that report, it won't be necessary to bring the

auditor in as a witness, and I can take the report myself and can study it over and you won't have to take all the time of the Court to introduce the evidence by the auditor. I am not going to permit you to take this Court's time to go over all those things in the auditor's report because I can get those things out of it just as well as he can."

Affiant thereupon stated, "I wish to direct the Court's attention to the fact that the reason why I made any statement to the Court at this time was simply in answer to the Court's statement that unless this case was completed within the three days' time allotted, the Court would declare a mistrial. I simply arose to tell the Court that if that was your position, you might as well declare a mistrial at this time, because it is impossible for us to complete our portion of the case within the three days that you speak of, and the opposing counsel will certainly be entitled to some time to offer evidence on their side. At least I assume at this time that the Court is not in a position to decide now that there will be no time allotted to opposing counsel to present their side of the case."

That the Court thereupon stated, "Counsel grabbed on a mis-statement made by the Court, that the Court was going to declare a mistrial," and that "the Court was thinking of a trial by jury and [150] was thinking of the fact that on a jury trial, if the Court had to go away for that length of time, there would have to be a mistrial declared"; that he was going to San Francisco, and would be gone for several weeks, and that "if it was a jury trial,

there would have to be a mistrial declared, but that since it was a court trial of course it will not be necessary to declare a mistrial, and I can continue the matter for a hearing when I return from San Francisco. I will have no further argument with you at this time. I am instructing you now to return at two o'clock, and I am instructing you to put on Mrs. Hamilton as your next witness at that time."

That during the entire proceedings related herein, the court reporter sat at his desk and apparently made no notes whatsoever.

Dated: October 9, 1948.

/s/ GLENN A. LANE,
Affiant.

Subscribed and sworn to before me this 9th day of October, 1948.

[Seal] /s/ H. H. SLATE,
Notary Public in and for Said County and State. [151]

State of California,
County of Los Angeles—ss.

H. H. Slate, being first duly sworn, deposes and says:

That Affiant is a citizen of the United States and of the State of California, over the age of twenty-one years, and at all times herein mentioned has been and now is an attorney at law, duly licensed to practice and practicing his profession in all of the Courts of the State of California, and in the

U. S. District Court, in and for the Southern District of California;

That at all times mentioned herein Affiant has been and now is one of the attorneys of record for the petitioning creditors in the above-entitled matter;

That Affiant has read the affidavit of Glenn A. Lane, dated October 9, 1948, and set out hereinbefore, which relates to statements made and proceedings that transpired before the Honorable Leon R. Yankwich, Judge presiding, on the 30th day of June, 1948;

That Affiant was present in Court at all times mentioned in said affidavit of Glenn A. Lane; that Affiant heard the proceedings which transpired in said Court at said time; that the statements as set forth in said affidavit of Glenn A. Lane are correct and that to the best of Affiant's recollection, the remarks of the Court and remarks of counsel were made as set forth in said affidavit; that if Affiant were called as a witness before the said above-entitled Court, or any other court of competent jurisdiction and were asked to relate the matters and things which transpired and the statements which were made by the Honorable Leon R. Yankwich and by the said Glenn A. Lane, that Affiant would testify to the matters set forth in the said affidavit of the said Glenn A. Lane and would testify to the conversations as set forth in said affidavit of Glenn A. Lane; that in short, Affiant believes that the said affidavit is correct, and that the statements therein set [152] forth purported to have been made by

the Honorable Leon R. Yankwich and the said Glenn A. Lane are fairly and accurately set forth, and that the said statements comprise all of the remarks that were made at said time.

Dated: October 9, 1948.

/s/ H. H. SLATE,
Affiant.

Subscribed and sworn to before me this 9th day of October, 1948.

[Seal] /s/ GLENN A. LANE,
Notary Public in and for Said County and State. [153]

State of California,
County of Los Angeles—ss.

G. N. Williams, being first duly sworn, deposes and says:

That Affiant is a citizen of the United States and of the State of California, over the age of twenty-one years, and at all times herein mentioned has been and now is an attorney at law, duly licensed to practice and practicing his profession in all of the courts of the State of California, and in the U. S. District Court in and for the Southern District of California. in and for the Southern District of California;

That Affiant has read the affidavit of Glenn A. Lane, dated October 9, 1948, and set out hereinbefore, which relates to statements made and proceedings that transpired before the Honorable Leon R. Yankwich, Judge presiding, on the 30th day of June, 1948;

That Affiant was present in Court at all times

mentioned in said affidavit of Glenn A. Lane; that Affiant heard the proceedings which transpired in said Court at said time; that the statements as set forth in said affidavit of Glenn A. Lane are correct and that to the best of Affiant's recollection, the remarks of the Court and remarks of counsel were made as set forth in said affidavit; that if Affiant were called as a witness before the said above-entitled Court, or any other court of competent jurisdiction and were asked to relate the matters and things which transpired, and the statements which were made by the Honorable Leon R. Yankwich and by the said Glenn A. Lane, that Affiant would testify to the matters set forth in the said affidavit of the said Glenn A. Lane, and would testify to the conversations as set forth in said affidavit of Glenn A. Lane; that in short, Affiant believes that the said affidavit is correct, and that the statements therein set forth and purported to have been made by the Honorable Leon R. Yankwich and the said Glenn A. Lane are fairly and accurately set forth, and that the said statements comprise all of the remarks that were [154] made at said time.

Dated: October 9, 1948.

/s/ G. N. WILLIAMS,
Affiant.

Subscribed and sworn to before me this 9th day of October, 1948.

[Seal] /s/ H. H. SLATE,
Notary Public in and for Said County and State. [155]

State of California,
County of Los Angeles—ss.

George B. McClyman, being first duly sworn, deposes and says:

That Affiant is a citizen of the United States and of the State of California, over the age of twenty-one years, and is one of the petitioning creditors in the above-entitled matter;

That Affiant has read the affidavit of Glenn A. Lane, dated October 9, 1948, and set out hereinbefore, which relates to statements made and proceedings that transpired before the Honorable Leon R. Yankwich, Judge presiding, on the 30th day of June, 1948;

That Affiant was present in Court at all times mentioned in said affidavit of Glenn A. Lane; that Affiant heard the proceedings which transpired in said Court at said time; that the statements as set forth in said affidavit of Glenn A. Lane are correct and that to the best of Affiant's recollection, the remarks of the Court and remarks of counsel were made as set forth in said affidavit; that if Affiant were called as a witness before the said above-entitled Court, or any other court of competent jurisdiction and were asked to relate the matters and things which transpired, and the statements which were made by the Honorable Leon R. Yankwich, and by the said Glenn A. Lane, that Affiant would testify as to the matters set forth in the said affidavit of the said Glenn A. Lane, and would testify to the conversations as set forth in said affidavit of Glenn

A. Lane; that in short, Affiant believes that the said affidavit is correct, and that the statements therein set forth and purported to have been by the Honorable Leon R. Yankwich and the said Glenn A. Lane are fairly and accurately set forth, and that the said statements comprise all of the remarks that were made at said time.

Dated: October 9, 1948.

/s/ GEORGE B. McCLYMAN,
Affiant. [156]

Subscribed and sworn to before me this 9th day of October, 1948.

[Seal] /s/ H. H. SLATE,
Notary Public in and for Said County and State. [157]

Received copy of the within affidavits October 11, 1948.

/s/ S. Y. ALLEN,
Attorney for Respondent.

[Endorsed]: Filed Oct. 12, 1948. [158]

[Title of District Court and Cause.]

AFFIDAVIT OF MARY E. HAMILTON IN OPPOSITION TO AFFIDAVITS OF GLENN A. LANE, G. N. WILLIAMS, H. H. SLATE and GEORGE B. McCLYMAN on MOTION FOR NEW TRIAL AND TO SET ASIDE AND VACATE JUDGMENT.

State of California,
County of Los Angeles—ss.

Mary E. Hamilton, being first duly sworn according to law, deposes and says:

That she is the wife of Wilbert C. Hamilton, respondent in the above-entitled matter; that she is the mother of three minor daughters, Betty and Barbara Hamilton, twins, at said time age seven years, and Patricia Joan Hamilton, age six years; that affiant was subpoenaed to appear at the above-entitled Court on the 29th day of June, 1948, at the hour of 10:00 o'clock of said date; that affiant was present at the time Court was opened; that numerous witnesses were subpoenaed who were friends and clients of her husband, respondent Wilbert C. Hamilton; that during the course of the trial, on June 29, 1948, Wilbert C. Hamilton addressed the Court and stated that your affiant was his wife; that she was not well and that there [159] were three small children at home with no one to look after them and asked that she be excused; that that conversation took place between the attorneys and the Honorable Judge Yankwich, and

that as a result of said conversation she was asked to address the Clerk and to listen to the Clerk's voice and that she would be excused until telephoned by the Clerk to come back to Court; that she never received any telephone call from the Clerk, nor did anyone else request her to return to Court and that she was never in Judge Yankwich's Court at any time prior or subsequent to June 29th except on June 29th only when she was excused.

Further affiant sayeth not.

/s/ MARY E. HAMILTON.

Subscribed and sworn to before me this 14th day of October, 1948.

[Seal] /s/ S. H. REDPATH,
Notary Public in and for Said County and State. [160]

Received copy of the within Affidavit of Mary E. Hamilton this 15th day of October, 1948.

/s/ H. H. SLATE,
Attorney for Petitioning Creditors.

[Endorsed]: Filed Oct. 16, 1948. [161]

At a stated term, to wit: The Sept. Term, A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 25th day of October, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Leon R. Yankwich,
District Judge.

[Title of Cause.]

For hearing motion filed Oct. 12, 1948, of petitioning creditors for new trial and to vacate judgment of Sept. 30, 1948; Glenn A. Lane and H. H. Slate, Esqs., appearing as counsel for petitioning creditors; S. Y. Allen, Esq., appearing as counsel for Respondent Hamilton;

Attorney Lane argues in support of said motion, and Court orders said motion for new trial, etc., denied. [168]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that George B. McClyman, Elizabeth Spencer Sauers, Elizabeth Brau, and Willis N. Urie, petitioning creditors in the above-entitled action, hereby appeal to the Circuit Court of

Appeals for the Ninth Circuit, from the final judgment entered in this action on September 30, 1948, and from the order and judgment denying motion of petitioning creditors for a new trial, entered on October 25, 1948.

GLENN A. LANE and
H. H. SLATE,
Attorneys for Petitioning
Creditors.

By /s/ H. H. SLATE.

[Endorsed]: Filed Nov. 24, 1948. [169]

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1948, before me, H. Handorf, a Notary Public in and for the County and State aforesaid, residing therein, duly commissioned and sworn, personally appeared M. Klotz and known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of the Continental Casualty Company, and acknowledged to me that she subscribed the name of the Continental Casualty Company thereto as principal and her own name as Attorney-in-fact.

[Seal] /s/ H. HANDORF,
Notary Public in and for the County of Los Angeles, State of California.
My Commission Expires July 25, 1952.

[Endorsed]: Filed Nov. 24, 1948. [170]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Whereas, George B. McClyman, Elizabeth Spencer Sauers, Elizabeth Brau, Willis N. Urie, petitioning creditors in the above-entitled action, have appealed to the Circuit Court from a judgment made and entered against said Petitioning Creditors in said action in the above District Court, in favor of the said Wilbert C. Hamilton in said action, on the 30th day of September, 1948, for none Dollars Principal, and Three Hundred Two and 78/100 ($302.78) Dollars cost of suit.

Now, Therefore, in consideration of the premises and of such appeal, the Continental Casualty Company, incorporated under the laws of the State of Illinois and authorized to execute bonds and undertakings as sole Surety, does hereby undertake and promise on the part of the said Appellants, that the said Appellants will pay all damages and costs which may be awarded against them on the appeal, or on a dismissal thereof, not exceeding Two Hundred Fifty ($250.00) Dollars, to which amount it acknowledged itself bound.

Signed, sealed and dated this 24th day of November, 1948.

CONTINENTAL CASUALTY COMPANY.

[Seal] By /s/ M. KLOTZ,

Attorney-in-Fact.

Examined and recommended for approval as provided in Rule 8.

/s/ GLENN A. LANE,

Attorney. [170]

[Title of District Court and Cause.]

AFFIDAVIT OF H. H. SLATE FOR ORDER EXTENDING TIME TO PREPARE TRANSCRIPT OF RECORD AND DOCKET APPEAL, AND ORDER EXTENDING TIME TO PREPARE TRANSCRIPT OF RECORD AND DOCKET APPEAL

State of California,
County of Los Angeles—ss.

H. H. Slate, being first duly sworn, deposes and says that:

He is one of the attorneys of record for the petitioning creditors and the appellants in the above-entitled action;

That Notice of Appeal in the above-entitled matter was filed by the petitioning creditors on the 24th day of November, 1948; that Appellants' Designation of Contents of Record on Appeal was filed on the 30th day of November, 1948; that Appellants received by service upon Affiant copies of Appellees' Objection to Condensed Statement in Narrative Form of Part of the Testimony, as offered by Appellants, and Designation by Appellees of Additional Contents of Record on Appeal, on the 7th day of December, 1948; that also on the 7th day of December, 1948, Affiant was served by the attorneys [208] of record for the Appellee with Notice of Motion Fixing the Amount of Bond for Costs on Appeal, and for an Order Upon the Purported Appellants requiring Them to Give the Appeal Bond Forthwith;

That said motion was heard by the above-entitled Court, Honorable Leon R. Yankwich Presiding therein, in Department Five, on the 13th day of December, 1948; that at said time, on the 13th day of December, 1948, Affiant was informed by the above-entitled Court that the designation of the entire reporter's transcript as demanded by the Appellee in the aforesaid Appellee's Objection to Condensed Statement in Narrative Form of Part of the Testimony, and Designation by Appellee of Additional Contents of Record on Appeal, was a matter of right of the Appellee, and not a matter of discretion upon hearing by the Court;

That immediately thereafter, on the 14th day of December, 1948, Affiant contacted Marie B. Zellner, one of the official reporters at the trial of the above-entitled action, and advised Mrs. Zellner that the entire transcript of the proceedings at the trial of the above-entitled matter would be required on the said appeal; that the said Mrs. Zellner advised Henry Dewing, one of the reporters at the trial of the said action, and the reporter who had taken the majority of the testimony, was ill and had been ill for many weeks, having suffered a partial nervous breakdown; that she was therefore unable to state when the transcription would be completed;

That thereafter, on the 16th day of December, 1948, Affiant was advised by Theodore Hocke, Chief Deputy of the above-entitled Court, that the said Henry Dewing was expected to return to his duties as official court reporter momentarily, and that the said Dewing's estimate of the time required to tran-

scribe the testimony taken by the said Dewing at the said trial would necessarily have to be made by the said Dewing;

That on the date hereof, the 22nd day of December, 1948, [209] Affiant was advised by the Clerk of the Court that the said Dewing had returned to his duties on the morning thereof, but had remained only a short time and then departed for home; and that the said Dewing was in bad physical condition and unable to perform his duties as official court reporter on a full-time basis;

That the said Mrs. Marie Zellner and the said Theodore Hocke have advised Affiant that due to the physical condition of the said Henry Dewing, the transcription of the testimony of the trial in the within action will probably not be completed before the middle of February or thereafter;

That by reason of all and singular of the foregoing, Affiant makes this affidavit for the purpose of requesting the above-entitled Court and the Honorable Leon R. Yankwich, Judge thereof, to extend the period for filing and docketing the appeal in said cause to and including the 21st day of February, 1949.

/s/ H. H. SLATE.

Subscribed and sworn to before me this 22nd day of December, 1948.

[Seal] /s/ GLENN A. LANE,
Notary Public in and for Said County and State. [210]

ORDER

Upon reading the foregoing affidavit, and good cause appearing therefor, it is hereby Ordered that Notice of Motion for extension of time within which to prepare and docket record on appeal, and service of copies of said notice and the aforegoing affidavit upon appellee be and the same hereby is dispensed with, and It Is Hereby Ordered that appellants shall have to and including the 21st day of February, 1949, within which to file the transcript of record and docket the appeal in the above-entitled cause.

Dated: December 22, 1948.

/s/ LEON R. YANKWICH,
Judge Presiding.

[Endorsed]: Filed Dec. 22, 1948. [211]

[Title of District Court and Cause.]

MEMORANDUM DECISION

The above-entitled cause heretofore tried, argued and submitted, and the various motions filed therein, heretofore argued and submitted, are now decided as follows:

I.

On the merits, judgment will be for the respondent Wilbert C. Hamilton, that the petitioners take nothing by their involuntary petition in bankruptcy against him, either as a member of the partnership of Brunson & Bunch, or individually, and that said

involuntary petition in bankruptcy be, and the same is, hereby dismissed as to the said Wilbert C. Hamilton, both as a member of the partnership of Brunson & Bunch and individually.

II.

The motion of the respondent Wilbert C. Hamilton to dismiss the proceedings, filed on March 24, 1948, and the companion motion to dismiss the first amended [115] petition as to him is, and the same is hereby granted.

III.

The other motions on which rulings have been reserved, for judgment on the pleadings, for summary judgment and to strike answers to interrogatories are, and the same are hereby denied.

IV.

The proceedings as to the partnership, Brunson & Bunch, and the admitted partners, Willard E. Brunson and Deon Bunch, under the Order of Adjudication dated November 13, 1947, are returned to the Honorable Hugh L. Dickson, Referee in Bankruptcy, for further administration.

COMMENT

The petition here was filed jointly against the partnership of Brunson & Bunch, of which it was alleged that the respondent Wilbert C. Hamilton was a member, and against him individually. On default, the partnership was adjudicated a bankrupt on November 13, 1947. The respondent appeared and denied membership in the partnership and insolvency.

To succeed, the petitioners had the burden of showing that the defendant was a general partner. (11 U.S.C.A. Sec. 23.) This they have failed to do.

The Bankruptcy Act of 1938 does not define the word "partnership." So we must fall back for its meaning on the general law of partnership and the state law of California. Whichever criterion we apply to the evidence, it is insufficient to establish a partnership. For the relationship here was not that of persons associated "to carry on a business for profit." (California Civil Code, Sec. 2400.) The dealings were governed by agreements entered into by the respondent and the partnership whereby, in consideration of the respondent's furnishing money belonging [116] to his clients or to trusts over which he had control, a definite percentage of the profits was promised. Each transaction was the subject of a special agreement. No other representations were made by the respondent to any of the clients. Nor was any obligation assumed by him for the successful culmination of the investment or the payment of the profits guaranteed. The clients knew that the profits to be derived from the enterprise were to be divided, so as to allow the respondent a profit for acting as the intermediary between them and the partnership. The accounts of the clients were kept in the books of the partnership, and the profits which the respondent received—10 per cent—were separate and distinct from the profits of the partnership. They were so entered upon whatever books he kept. No control was exercised by him over the conduct of the affairs of the part-

nership. All that the respondent had was the promise of a certain percentage of the profits, the amount of which depended on whether the money invested belonged to a trust in which he had an interest, or belonged entirely to clients. So the relationship between the respondent and the partnership has none of the indicia of a partnership. At most, we have a series of separate dealings of the joint venture type. Nor does the record show acts of estoppel which would warrant the court in declaring the respondent to be a general partner. (See, Collier on Bankruptcy, 14th Ed., Vol. 1, Sec. 5.02; California Civil Code, Secs. 2400, 2401, 2410; Lott v. Young, 9 Cir., 1901, 109 Fed. 798; Partner Williams, 1 Cir., 1924, 297 Fed. 696; Kloke v. Pongratz, 1940, 38 C. A. (2) 395, 401-404.)

The conclusion reached makes it unnecessary to determine whether the respondent, individually, is insolvent. However, it should be added that, in this respect [117] also, the evidence fails to show insolvency as defined by the Bankruptcy Act of 1938. (11 U.S.C.A. Sec. 1(19).)

Hence the ruling above made.

Counsel for the respondent will prepare findings and decree in conformity with the views here expressed, under Local Rule 7.

Dated this 14th day of September, 1948.

/s/ LEON R. YANKWICH,
U. S. District Judge.

[Endorsed]: Filed Sept. 14, 1948. [118]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL

1. Error of the court in excluding evidence offered by petitioning creditors to establish fraud and deceit practiced by the respondent, Wilbert C. Hamilton, upon the petitioning creditors and other creditors of the partnership of Brunson & Bunch.

2. Error of the court in excluding evidence offered by petitioning creditors to establish a general plan and scheme on the part of the respondent, Wilbert C. Hamilton, and Willard E. Brunson and Deon Bunch to cheat and defraud the petitioning creditors and other creditors of the partnership of Brunson & Bunch.

3. Error and misconduct of the court in directing the court reporter not to report certain remarks of the Court made during the trial.

4. Error and misconduct of the court in the court's ruling and statement that the court reporter belonged to the court and that [171] the court reporter need not report all of the remarks of the Court or all of the proceedings before the court, but need only report what the court ordered the reporter to record and report during the trial of the proceedings.

5. Error of the court in its finding of fact, finding and determining that the respondent, Wil-

bert C. Hamilton, is not indebted to the petitioner, George B. McClyman, in any amount whatsoever.

6. Error of the court in its finding that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Elizabeth Spencer Sauers, in any amount whatsoever.

7. Error of the court in its finding that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Elisabeth Brau, in any amount whatsoever.

8. Error of the court in its finding that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Willis N. Urie, in any amount whatsoever.

9. Error of the court in its finding that the respondent, Wilbert C. Hamilton, is in no way responsible for the actions of the members of the co-partnership of Brunson & Bunch, to wit, Willard E. Brunson and Deon Bunch, in regard to the commission by the said co-partners of any of the acts of bankruptcy alleged in the Amended Complaint (Petition).

10. Error of the court in its finding that with reference to the dealings between the respondent, Wilbert C. Hamilton, and the partnership of Brunson & Bunch, each transaction was the subject of a special agreement and that no other representations were made by the respondent to any of the clients (investors).

11. Error of the court in its finding that the petitioning creditors are not creditors of the respondent, Wilbert C. Hamilton.

12. Error of the court in its finding that the accounts of the clients (investors) were kept in the books of the partnership, [172] and the profits which the respondent received amounted to ten per cent, and were separate and distinct from the profits of the partnership; that such profits were "so entered upon whatever books he kept."

13. Error of the court in its finding that no control was exercised by the respondent over the conduct of the affairs of the partnership.

14. Error of the court in its finding that all that the respondent had was the promise of a certain percentage of the profits, the amount of which depended on whether the money invested belonged to a trust in which he had an interest, or belonged entirely to clients.

15. Error of the court in its finding that the respondent Wilbert C. Hamilton was never associated with Willard E. Brunson and Deon Bunch in any co-partnership relationship of any kind or nature whatsoever.

16. Error of the court in making findings of fact and drawing conclusions of law from such findings of fact, which findings of fact and conclusions of law are and each is outside of the issues, and not within the issues framed by the pleadings in the case,

and each and all thereof being unsupported by the evidence admitted in the case.

17. Error of the court in its finding that Wyman G. Reynolds, attorney at law, appeared in the trial on behalf of Willard E. Brunson and Deon Bunch, a co-partnership, doing business as Brunson & Bunch.

GLENN A. LANE and
H. H. SLATE,
Attorneys for Petitioning
Creditors.

By /s/ H. H. SLATE. [173]

November 30, 1948:

Received of H. H. Slate as of the above-stated date copy of Statement of Points upon Which Appellants Intend to Rely on Appeal.

/s/ S. Y. ALLEN.

[Endorsed]: Nov. 30, 1948. [174]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 211, inclusive, contain the original Involuntary Petition in Bankruptcy; Two Orders of General Reference; Answer to Involuntary Petition in Bankruptcy; Request for Jury Trial; Petition and Order to File First Amended Invol-

untary Petition in Bankruptcy; First Amended Involuntary Petition in Bankruptcy; Affidavit of Wilbert C. Hamilton; Answer to First Amended Involuntary Petition in Bankruptcy with Interrogatories With Request that They be Answered Under Oath, i.e. by Each of the Petitioning Creditors Separately; Order to Answer Interrogatories; Request for Jury Trial; Petition and Order Extending Time to File Answers to Interrogatories; Separate Answers of Elizabeth Brau, Elizabeth Spencer Sauers, Willis N. Urie and George B. McClyman to Interrogatories; Answer to First Amended Involuntary Petition in Bankruptcy; Debtor's Petition filed Feb. 4, 1948, signed by Deon Bunch; Motion for Order re Delivery of Partnership Records and Affidavit in Support Thereof; Order of Referee re Citation to Judge re Contempt; Referee's Certification to Judge of Receiver's Petition; Petition for Contempt Citation; Notice of Motion to Release Attachments on Behalf of Wilbert C. Hamilton; Separate Affidavits of S. H. Redpath, Fletcher L. Baughn and Wilbert C. Hamilton; Order re Examination of Records, Papers and Effects of and in Possession of Alleged Bankrupt; Minute Order Entered April 5, 1948; Memorandum Decision; Summary of Debts and Assets; Objections to Findings of Fact and Conclusions of Law; Findings of Fact and Conclusions of Law; Judgment; Motion for New Trial and to Vacate and Set Aside Judgment; Affidavits of Glenn A. Lane, G. N. Williams, H. H. Slate and George B. McClyman, in support of Motions for New Trial and to Set Aside and Vacate

Judgment; Separate Affidavits of Mary E. Hamilton and Wilbert C. Hamilton in Opposition to Affidavits of Glenn A. Lane et al; Minute Order Entered October 25, 1948; Notice of Appeal; Cost Bond on Appeal; Statement of Points Upon Which Appellants Intend to Rely on Appeal; Appellants' Designation of Contents of Record on Appeal; Condensed Statement in Narrative Form of Part of the Testimony; Appellee's Objections to Designation of Contents of Record on Appeal, etc.; Objections to Condensed Statement in Narrative Form, etc.; and Affidavit and Order Extending Time to File Record and Docket Appeal which, together with original depositions of Elizabeth Brau, Elizabeth Spencer Sauers, Elizabeth Spencer Sauers, and George B. McClyman and Willis N. Urie, original petitioners' exhibits 2 to 50, inclusive, and respondents A to K, inclusive, and original reporter's transcript of proceedings on June 29 and 30, July 1, September 7, 8 and 9, 1948, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to $2.80 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 10 day of February, A.D. 1949.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

In the District Court of the United States for the Southern District of California, Central Division

No. 45,310-Y—In Bankruptcy

In the Matter of:

WILBERT C. HAMILTON, Individually, and the Partnership Known as BRUNSON AND BUNCH, Composed of WILLARD E. BRUNSON, DEON BUNCH, and the Said WILBERT C. HAMILTON,

Alleged Bankrupts.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Tuesday, June 29, 1948

The Court: Incidentally, gentlemen, I want to say this: As you understand, I reserved not more than three days for this case. This case has to be concluded on Thursday, because on Friday I am on my way to San Francisco on an assignment by the senior circuit judge to hold court there for the month of July. You will remember this case was set for an earlier date, and was continued at your request. So everyone has to work and work very fast, and the case must be concluded, that is, the taking of evidence must be concluded on Thursday. Otherwise it will have to go over until September for conclusion. I just want to give you that warning. This is the kind of a matter that can be disposed of very expeditiously within the maximum

number of days estimated. I notice a lot of people here, however, and I want everybody to feel that all the testimony necessary will go in, but if you think we are going to discuss the financial rights of all parties involved, it is beyond the scope of this inquiry. All we are interested in is to find out or to determine whether there is an insolvency in the case and whether Mr. Hamilton is a member of the partnership that is insolvent. I am not here to give back [4*] to anybody any money invested with anybody, because that is not my province, and when I make my findings, if I make a finding that Mr. Hamilton is not a member of the partnership, then the litigation ends, and if I find he is, then it goes back to the Referee in Bankruptcy for further proceedings, because that is what the referee is for. The only reason this trial takes place before me is because originally a jury was requested and a trial by jury cannot be had before a referee. A referee can hear a matter, but not with a jury. Nevertheless, when the jury was waived I decided to keep it to decide this particular issue, more so because the referee did not feel he could handle the matter and sent it to me to take over. So I want everybody to understand what we are here about and want everybody to know that this case has to be disposed of very expeditiously, and I have no sympathy with any of the motions that will seek to determine this on a shortcut. It has to be decided on the merits. That is why I continued every motion on the calendar to the present time. I want evidence on the merits and I will dispose of all of the matters with

one judgment. That applies to both the motions by the plaintiffs and the motions by the defendants. With that, we can proceed with the case. I do not want a statement of the case because I have heard so much about it already. So call your first witness, and let's proceed. [5]

The Court: What is the materiality of that? We are not trying a criminal law suit here. We are trying a simple law suit. This isn't the first one of this kind that I have tried. I have tried a lot of them. I know the temptation there is, especially when your clients are sitting in the court room, who were investors, to air everything in court, but this is no place to determine anything except the simple proposition: Is Mr. Hamilton a member of this partnership, and is it insolvent? Otherwise I am not interested.

Mr. Slate: This is offered to show the complete cooperation that existed between Mr. Brunson and Mr. Hamilton in all matters, even extending to that matter.

The Court: That does not make any difference, the fact that he appeared in the District Attorney's office. That does not prove partnership.

Mr. Slate: I will withdraw the question.

Mr. Willard: I have been sitting here and listening carefully, and all the testimony introduced so far will establish if, by chance, Hamilton is a partner, Williams is also a partner. [47]

The Court: That isn't the point they are talking about. Besides we need not discuss now the effect of the testimony. We will judge that later on. If he is, then there can be further proceedings to tie him in later on. You always have a right to bring in others into a partnership, if it is shown that they are. The referee can hear any tie-in proceeding later on.

I want to say this, so that you will know I do not intend to keep this proceeding before me except for the purpose of this trial and to determine this issue. I am not going to take the refusal of any referee to handle this matter. You see, I have not discharged the referee. This matter is still before the referee for all other purposes. I have not discussed the matter with him, and as I told you when first you gentlemen began to bring matters before me, the referee had not even consulted me, whether he would take it or not, and I did not care to talk to him; that I took the position to avoid him for the present, because you gentlemen, in the language of the street, seemed to have gotten too hot for him, and that has continued to the present time. So I am going to cool you off, and when you are cooled off, I will send you back to the referee, whose job it is, and who is paid by the government, to administer estates. Our job is to try law suits, and the administration of the estate is not the province of a judge, unless [48] he chooses to do so, and I do not choose to in this case. So after I decide this one matter, then it will go back and all further proceedings will be had before the referee, and there

will be no transfer unless I am consulted in advance and have agreed to it. This is notice to you all, and to the referee, or to any other referee, if he should wish to disqualify himself from further hearing of this matter upon any legal ground. So let's limit ourselves to settling this one issue, and not other issues.

* * *

The Court: You may know the fact. I don't know. It may or may not. If Mr. Hamilton sat in other than as an attorney, as a principal, and discussed with persons, say, representatives of the Board of Trade, presenting an assignment to creditors, that may have a bearing on whether by any actions he acknowledged he was a partner or had an interest in it. The rights of the parties, the contractual rights of the parties are determined by the law of the state in which we sit, and whether or not a man is a partner has to be determined under the law of California. And under the law of California it isn't necessary that you write an agreement of partnership. If, as a matter of fact, he participates in the profits of the corporation, even though there may be two or more in the venture and even though there [52] be no written agreement, the court may find a partnership actually existed, even though the man denies that it exists. That is the law which governs here, the law of California. So that the proof as to the existence of a partnership must be of a very broad nature——

Mr. Utley: I understand that.

The Court: —because of the nature of the matter. Therefore, admissions, participation, suggestions for control, and the hearing of complaints are just as revealing to a person who, like myself, is charged with the duty of finding or not finding a partnership as the actual splitting of profits. And if this were before a jury, I would have to instruct the jury that in determining whether a partnership exists they have a right to find and to consider what, if any, profits were divided, and also whether the man participated in the management, whether he had something to say about the policy, whether he had control over the other men whose names actually appeared and who—I don't mean to use the word disparagingly—who fronted for the men behind the facade. I am using it in the ordinary sense, and not in a disparaging sense. For that reason the scope of the inquiry must be broad. Therefore, while I am going to limit the inquiry to the particular issues, in proof of the particular issues I am going to allow all matters which are relevant to prove participation, which may make him a [53] partner, whether he actually signed his name to it or not, because we are not dealing here with a law suit between two partners. We are dealing here with the rights of third parties, that is, creditors, and the law is entirely different. What may not be sufficient to establish a partnership as between two partners, who sue each other to try to prove the existence or non-existence of a partnership——

Mr. Utley: I think I understand.

The Court: —may be sufficient when we are talking about the rights of third parties as against those two. An entirely different type of proof is required. If you want to determine what is required under the law of California, all you have to do is to go to the Blue Book to see what is and what is not necessary to prove partnership. For that reason many of these incidents which would have no bearing if Mr. Bunch and Mr. Brunson were suing Mr. Hamilton in a civil suit of a type which can be brought between partners, such as a dissolution of partnership, or the like, or for an accounting of profits, then that type of evidence would be insufficient to establish such a relationship, but it might be ample in a suit like this, which is a suit by creditors to hold a man to responsibility as a member of a partnership.

Mr. Utley: I think I understand the law as to partnership, your Honor. [54]

The Court: I know you understand, but I want you to know that I understand it, too.

Mr. Utley: I know that.

The Court: So that when we talk the same language there will not be any time wasted.

Mr. Utley: I know, but to discuss all that might be said about an assignment to creditors might take us through a lot of useless conversation.

The Court: No. You know my method. I do not allow useless conversation in my court. You are trying a case in my court without a jury. After all, I have developed some technique in my time as a judge. This is my twenty-first year as a judge,

so you, gentlemen, ought to know by now that I do not allow any wild goose-chase. So long as we do not have a jury, I will say this, that what a man says when he participates in a conference as to assignment to creditors may be very important to show in what capacity he appears. If he isn't a partner, he has no business there unless he is an attorney. If it appears he is an attorney, then, of course, the inquiry might be made, and even then he may claim to be an attorney, but some statements may have been made there, in his presence, showing he received certain profits or somebody might have said he is a partner, or may have said to him, "You are in this deal, too," and his answer to that may be very revealing, and [55] would certainly be an admission. You can base a partnership for this purpose upon an admission of participation of the type I have already enumerated. I don't know what this is going to be.

Now, don't start closing your brief cases, gentlemen. I never look at a clock here. We are not ready to quit yet. We will make up for the few minutes I took this morning to bring myself up to date.

* * *

The Court: All right. Step down. This is a good time to stop so as not to break the continuity of the cross-examination.

Mr. Hamilton: At this time, if your Honor please, as a member of the bar, and not represent-

ing myself, may I have the courtesy of addressing the court on behalf of clients of mine?

The Court: In what manner?

Mr. Hamilton: In this manner, that all these witnesses here are clients and friends of mine.

The Court: I see.

Mr. Hamilton: Dr. Hillman here is a very busy dentist, and it is costing him approximately $100 a day to be here. All of these other people are in business, and they have been [67] subpoenaed here for reasons which your Honor will later find out, without any comment from me. But they are losing time, and can it not be agreed upon at what hour they expect to call these people, so that they will not have to remain, but can be here at that time and save themselves from unnecessary loss?

The Court: I cannot tell at the present time what range the testimony is going to take. Ordinarily, where professional men are involved, I try to accommodate them, especially if they are experts. I don't know why they are subpoenaed. I cannot determine whether their testimony is material at the present time. All I can do is this: As soon as I find out the range the testimony is going to take, I will know much more definitely whether these witnesses can be excused. What is this dentist called here to testify about?

Mr. Slate: Your Honor, he put considerable money into this affair. The professional men, in particular, who telephoned me have been put on call. I put my card on each subpoena for that purpose, and as to the professional men, I arranged

with some of them to be on call. Some of them, like Dr. Hillman, would promise nothing, and all he said was he remembered nothing whatsoever as to who he put the money in with, and I didn't feel we could rely upon his being here upon a telephone notice. [68]

The Court: What bearing does the fact that the man invested money have upon the partnership? You may sit down now.

Mr. Slate: To prove how the funds were taken from the investors and given to Mr. Hamilton. We have a list of items here, of approximately 60 individual and separate items, most of them involving these people who put their money in, and to show the partnership between Mr. Hamilton and Mr. Brunson. As your Honor knows, we have had a terrible time to get this list.

The Court: The question of how that was put up is not material. It is what he did with it as to the partnership.

Mr. Slate: We have had no opportunity to examine the investors as to the representations made, whether they ever heard of Deon Bunch or Brunson. We didn't subpoena all of the investors, but only some that we thought would be particularly good witnesses. Of course, if the court feels it is not material, we will not raise any objection to the dismissal of some of them.

The Court: I will tell you this: The only way I can do that is if you put on a sample witness. If you put one of the witnesses on to testify as to the circumstances, then I could determine whether that

has any bearing. I presume counsel might be willing to stipulate that certain moneys were secured for investment purposes from particular [69] persons. You should not answer that now.

Mr. Hamilton: I am not going to. I wanted to make the statement that on deposition all the record has been examined, every check and everything else, and the statement that he can prove partnership by any one of these people is an absolute falsehood.

Mr. Slate: We will wait, then, until we put on the evidence, your Honor.

The Court: We are not getting anywhere, you see. That is the danger of having you get out of character.

Mr. Hamilton: I am thinking of my clients.

The Court: You cannot have the proper viewpoint, being an interested party, and that is why you have able counsel to represent you.

So long as we have reached the cross-examination of this witness, and the cross-examination will take some time, I presume, I will deviate from the regular order and allow you to produce the one witness whom you feel will be the strongest one you have, perhaps the doctor, or just anyone you want to call. Then I will see from the trend of the testimony whether the testimony will reveal anything more than the books show, and that is that certain money was turned over to Mr. Hamilton for the purpose of investment. Then if that is all the testimony reveals, then in view of the fact that you have the

books and counsel are willing to [70] stipulate that the moneys were received in the amounts disclosed by the books, the rest of the matter will be absolutely immaterial.

Mr. Slate: If counsel will stipulate that the amounts were received through Mr. Hamilton, that is what we are trying to prove.

Mr. Hamilton: Your Honor, it has already been stipulated and the records show I received that money, and it shows where every penny went to.

Mr. Slate: That isn't true.

Mr. Hamilton: That is true, and you know it.

The Court: Now, you sit down.

Mr. Allen: May I make a statement?

The Court: Now you know why the referee didn't want to hear it.

Mr. Lane: If the court please, you will recall from reading the record——

The Court: We are not talking about that. That is past history.

Mr. Lane: This is right at the present time. You will recall that then and constantly from then on to this present time Mr. Hamilton has refused to testify to these things. Now he makes this bald statement here.

The Court: All right. We have Section 43(b) here, which is identical with Section 2055. [71]

Mr. Allen: It is Section 21 of the Bankruptcy Act.

The Court: No, I am not talking about the Bankruptcy Act. You know the Bankruptcy Act,

and so do I. But I know the civil rules, too. I am talking about Section 43(b), which says:

> "A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject-matter of his examination in chief."

That is identical in scope with the famous section 2055 of the Code of Civil Procedure, so that now you can call Mr. Hamilton and cross-examine him by leading questions as to any facts that are material to the inquiry. But once more I say that I am not interested now in the accuracy of the books. I am interested in just one thing, was he a partner, and the amount of money he turned over, and does it bear on the partnership? When I have decided that question, and when I find there is bankruptcy and that he is a partner [72] to it, that he is insolvent in his individual capacity, then I will send you back to the referee, and if that referee will not hear it, I will change the referee, I will appoint one who will hear it, and then all these people who did not get their money will have their chance in court to prove their claims. I am not establishing claims here. That is not the function of a judge.

Mr. Lane: But that is why we brought them in, to prove that Mr. Hamilton went out himself and made these representations, participated in it, and told these different people different things.

The Court: Those representations do not bear on partnership, and we are not trying a mail fraud suit, or obtaining money under false pretenses. A man may do so merely as a salesman, or for other reasons, and the fact that he represents that profits were made does not prove partnership. But I will allow you to put on the best witness you have.

Mr. Lane: The point is this, that is what the court has to pass on when we put on the witness. That is the very answer to this thing.

The Court: All right. Put on your witness, and I will see. I will see how much of a stipulation I can get for you. I can get stipulations that you can't.

Mr. Lane: That is fine. [73]

The Court: We are through all of the preamble, and all of those matters are finished. They wanted to put you in jail last week. They brought me an order to show cause as to why you should not be put in jail for contempt, and you wanted to put them in jail earlier in the case. So that is all over, and nobody is in jail. We are going to decide this on the merits. So we will adjourn at this time, and you decide which witness you want to put on the stand at 2:00 o'clock.

Mr. Hamilton: Your Honor, my wife has been subpoenaed, and she is not well, and we have three children and my wife has to take care of them.

Mr. Slate: If the court please, on that, we can prove many thousands of dollars went into this woman's own account, and she is one of the principal parties here.

The Court: But you are not trying to prove her a member of the partnership?

Mr. Lane: If the court please, Mr. Hamilton is the one we are proving a member of the partnership.

The Court: I don't know what his wife has to do with it.

Mr. Lane: We think she is a very material witness.

The Court: Then put her on first at 2:00 o'clock.

Mr. Lane: Will we put her on——

The Court: Just a minute. I will determine the order [74] of proof we are going to follow.

Mr. Lane: I thought a minute ago your Honor said to put on the best witness we had.

The Court: I have changed things. She is not an adverse witness because you do not charge her as a partner.

Mr. Lane: I would suggest this, your Honor: If she wants to be excused——

The Court: I am going to bring her back at 2:00 o'clock, and you will put her on then, or excuse her. I am not going to have you bring in a lot of people on the chance that they might be witnesses.

Mr. Lane: Well, let's take that up at 2:00 o'clock, your Honor.

The Court: There is nothing to take up at 2:00 o'clock on that. I have already determined that you will call her as a witness then. Otherwise, I will excuse her.

Mr. Lane: Very well, your Honor. That will be at 2:00 o'clock?

The Court: At 2:00 o'clock.

(Whereupon, at 12:40 o'clock p.m. a recess was taken until 2:00 o'clock p.m. of the same day.) [75]

Los Angeles, California,

Tuesday, June 29, 1948. 2:00 P.M.

The Court: All right, gentlemen, call your witness. As I stated this morning, we will defer the cross-examination of Mr. Williams so as to allow you to call Mrs. Hamilton, if counsel desires, so that she may be excused. If they do not desire to call her, then you can call one of the sample witnesses, so that the court may determine whether all these persons who are here to testify as to certain representations are material witnesses or not.

Mr. Lane: May I make one statement of explanation, your Honor, in regard to the other witnesses who are here. It was our intention to call those as soon as Mr. Williams had finished his cross-examination, and, of course, we are willing to defer the cross-examination in order to expedite the calling of those other witnesses. They were witnesses we intended to call right after Mr. Williams.

Now, as far as Mrs. Hamilton is concerned, I would like to explain this, that the purpose in subpoenaing Mrs. Hamilton was to have her here, because we believe that she is a material witness to establish the fact of solvency or insolvency of Mr. Hamilton. We also had the further purpose that if the issue was properly to be presented on the question of fraud, that she would be here on that. Now the court has ruled on that, and that point is eliminated. [76] But in regard to the establishment of solvency or insolvency we believe that she is—pardon me. Let me put it this way: we believe she may be a very material witness.

The Court: All right. Put her on. We have deferred the cross-examination of Mr. Williams, so put her on right now.

Mr. Lane: All right. Now, may I state this, with due respect to the court's suggestion, if you wish to put it that way, about the order in which we put on the witnesses, we believe that it would be extremely prejudicial to the orderly presentation of our case to put on Mrs. Hamilton at this time, and therefore, if the court please, I desire to object on that ground, that it would be extremely prejudicial.

The Court: Would you state why it is prejudicial, when I am trying this case without a jury, and I can hear testimony in advance?

Mr. Lane: Yes, I will. We feel that it is necessary, in the orderly and proper presentation of our case, to put on Mr. Hamilton first and to elicit from

him certain answers to certain questions before we put her on. Now, whereas the court's decision is, which you will understand, that the burden is on us to present the case.

The Court: I understand, but I am not running a game here. I am running a court of justice. I am not running [77] a game of skill here, to determine which is the most skillful among counsel. If you have read any of the opinions I have written, you will see that I have said that a hundred times in the last 20 years. The object of the court is to achieve justice under the law, and not to countenance a game of skill, and I reserve the right to tell counsel that. I will excuse her now, subject to call. Subject to call, you understand?

Mr. Lane: In other words, I would like this understood, if the court please: It is embarrassing to me and to my associates to have to disagree with the court in any way.

The Court: It isn't embarrassing to me.

Mr. Lane: Very well.

The Court: I am just stating my grounds.

Mr. Lane: That is right.

The Court: And you have a right to state your grounds to me.

Mr. Lane: That is right.

The Court: But we are not running a game here. We are running a court of justice, and I have a right to tell you, when representations are made to me and when a witness is here, that you cannot put her on the stand as an adverse witness. You have

to put her on as your own witness, and you must know before you put her on what she is going to testify to.

Mr. Lane: We do, and in that respect, your Honor, [78] knowing what she will testify to, we are in the position of having to decide whether we will put her on at this time.

The Court: All right.

Mr. Lane: And I feel, and I would like the record to show, that we believe that it would be prejudicial to the presentation of our case to put her on before we call Mr. Hamilton. We will abide by your ruling, of course, your Honor.

The Court: Let the record show that the grounds advanced I do not consider to be prejudicial. The witness can be examined at any place. As a matter of fact, it would be much better to have her now, from a tactical standpoint, because she will not have heard what Mr. Hamilton would testify and would not likely be consciously or unconsciously influenced thereby. Because the woman is not in good health, I want to be satisfied of the good faith of counsel in calling her, and order that she be examined now.

Mr. Lane: Well, I don't know that she is not in good health.

The Court: I take it Mr. Hamilton is a member of the bar, and when he makes the statment that I have the right to rely on it, unless you go on the stand and state she is not. Besides that, a woman who has children to take care of has a right to be called, be examined, and then excused, so [79] that

she can go to her children and not have to wait around here for three solid days.

Mr. Lane: The witness I will call, then, your Honor——

The Court: No, you are calling Mrs. Hamilton. Otherwise I will excuse her.

Mr. Lane: I thought I made it clear, your Honor——

The Court: Do you say you decline to call her now?

Mr. Lane: Yes, that is right.

The Court: You decline to call her now. Very well. Mrs. Hamilton, you will be excused. However, if I decide you should be needed and decide that counsel is entitled to call you again, the clerk of this court, Mr. Childress, will call you.

Mr. Childress, just rise and call the lady's name, so that she can recognize your voice.

The Clerk: I don't know her first name, but I will say "Mrs. Hamilton."

The Court: Will you speak your name, Mrs. Hamilton, so that if he calls you by telephone he will know who it is.

Mrs. Mary E. Hamilton: My name is Mrs. Hamilton.

The Clerk: Your first name, please?

Mrs. Hamilton: Mary E. Hamilton.

The Court: Now, you understand I am excusing you at the present time, with the understanding that if the clerk of this court identifies himself by name and tells you you are [80] wanted, that you

will come immediately—I mean within a half hour or whatever time it takes you to get to the court room?

Mrs. Hamilton: That is correct.

The Court: Then you may be excused.

Mr. Lane: Thank you, your Honor. Now, I would like to state this, that so far as any witness that can be called on the telephone, it is perfectly agreeable that he leave, with the understanding he is subject to call.

The Court: I am not making any orders about call on the telephone except as to Mrs. Hamilton. I am just making the order with reference to her.

Mr. Lane: But I wanted it clear that we are perfectly willing to follow through in that way.

The Court: That isn't the point. I am not interested in what you are wanting to do on that. I have already indicated that you appear not to be willing to do anything except to follow your own ideas, and so I am exercising my own prerogative in running this court.

Mr. Lane: Then I understand, your Honor, at this time——

The Court: I want you to bring on the other witness whom you are going to use as representative of the group which you say you are going to put on. If you want to put on any witness as to why you don't want to go ahead, go ahead and do it.

Mr. Lane: No, we intend to.

The Court: Call your witness. I have already indicated I do not think these witnesses can testify

to anything that is material in this case. I am not questioning your right to bring them in, because you cannot tell in advance——

Mr. Lane: That is right, your Honor.

The Court: —what the court is going to rule. You may have an erroneous conception of the law of evidence. Many lawyers do, and lawyers of much greater experience than you have had.

Mr. Lane: I admit I did have a misconception.

The Court: So I am not criticizing you for bringing them in.

Mr. Lane: That is right.

The Court: But you having brought them, and it having been called to my attention that you did so, I exercised the prerogative, which is mine, of changing the order and asking you to produce them at this time, so that this group of witnesses, who have no interest in the case unless their testimony is material, may be on their way.

Mr. Lane: I just want the record to show that we intended to call these witnesses right after Mr. Williams anyway, so that it isn't actually changing the order, because they would have come in at this time. The only thing is the court is obliging them by deferring the cross-examination. [82]

The Court: Yes, I am. I am always glad to accommodate outside persons who have no interest in the law suit. That is the province of any court, not to tie people down in a room in a proceeding in which they are not interested. I thought they were spectators. That is the reason I made the state-

(Testimony of Dr. Raymond E. Donahey.)

ment this morning, because I know in all of these cases where there are investors present, a lot of persons come in thinking that it has something to do with their claim, and that is why I made the statement, out of long experience, believing that all these persons were merely spectators who might think that I am going to give them back their money that they have invested.

Mr. Lane: Out of your pockets, you mean?

The Court: No, no. I am talking judicially.

Mr. Lane: I will call Dr. R. E. Donahey.

* * *

Excerpts from testimony of:

DR. RAYMOND E. DONAHEY

Direct Examination

Mr. Slate: There are no further questions of this witness.

The Court: Any questions, counsel?

Mr. Utley: At this time, your Honor, we move to strike the testimony of the witness and the exhibits, to wit, No. 2, 3, 4, 5, 6 and 7, on the ground they are wholly immaterial to prove or disprove any issues in this case.

The Court: I will deny the motion. Do you want to ask any questions? [92]

Mr. Utley: Certainly, there is nothing there that tends to prove or disprove a partnership.

The Court: I have something in mind. I can't

(Testimony of Dr. Raymond E. Donahey.)

tell you yet. You will have to use your own judgment.

Mr. Utley: No questions.

The Court: All right. I will ask you a question.

Q. (By the Court): You read these letters, did you not? A. Yes.

Q. In those letters and the receipts it is stated that he has deposited this money as your agent?

A. That's right.

Q. And that you were gambling on futures; isn't that true? You don't want to use the word "gambling." Mr. Pauley uses it, and he is a very distinguished gentleman in California. He admitted he made $1,000,000.

A. We were wagering.

Q. You were wagering. You were wagering on futures. There is a letter there, I think it is No. 6, or No. 7. Let me see the last exhibits, particularly the one which said no other understanding was had or statements were made other than those which are set forth. I think it is in No. 5. Here is the clause here:

"There is no other understanding—written or verbal—between us arising out of this [93] transaction or any extension or substitution therefor; and if you carry out the instructions contained herein, you are in no manner, shape or form to be held liable, either now or later, for the money hereinabove referred to as given to you, as you are acting entirely as my agent and not otherwise."

(Testimony of Dr. Raymond E. Donahey.)

That was a typewritten form which you signed and sent back to him; isn't that true?

A. That's right.

Q. In duplicate?

A. That's right.

Q. He kept the original, then, and he returned this carbon copy? A. That's right.

Q. With his receipt on it?

A. That's right.

Q. Now, is that statement correct?

A. That statement is correct.

Q. No other representations were made to you orally as to the transaction?

A. There are two transactions there.

Q. I mean this one check?

A. That's right.

Q. The $6,000? [94]

A. That's right. There is another transaction.

Q. The other transaction is the $2500 that was returned, and the letters explain that?

A. Yes.

Q. Was there anything else said other than contained in the letters on the first transaction?

A. No, nothing other than contained in the letters.

Q. In other words, you put up the money under the conditions disclosed there?

A. That's right.

Q. And you understood at all times that money was to be invested? A. That's right.

(Testimony of Dr. Raymond E. Donahey.)

Q. On the chance that the market in eggs would rise and a profit would ensue, and you would get 20 per cent, and Hamilton and his associates in the deal would get 20 per cent; is that right?

A. 20 per cent.

Q. Isn't that right? I am not trying to confuse you with respect to your prospective profits.

A. That is right.

The Court: I want to tell you you are living right up to pattern. Doctors and dentists go into these deals.

The Witness: They are suckers, right on top of the list. [95]

The Court: I didn't say that.

The Witness: No, I know that.

The Court: Judges never get into this type of thing because they haven't enough money to spare. They have to raise a family on a salary; unless they have been on the bench and retire and capitalize on any reputation they make. But real judges, who stay on the bench, and not men who have been there and gone into private practice do not get involved in this type of thing.

Mr. Lane: There are a couple questions that I want to ask further, your Honor.

The Court: All right.

Q. (By Mr. Lane): These letters you signed, addressed to Mr. Hamilton, were prepared and presented to you by Mr. Hamilton?

A. That's right.

(Testimony of Dr. Raymond E. Donahey.)

Q. In other words, those are forms that he had prepared and delivered to you, and asked you to sign them? A. That's correct.

Q. And you signed them, as they were?

A. That's right.

The Court: I thought that was plain from the answer.

Mr. Utley: I thought so, too.

Mr. Lane: That is all.

The Court: All right. Step down.

(Witness excused.) [96]

The Court: Gentlemen, I have this thought in mind: If you will stipulate that the testimony of the other witnesses whose names will be given would be substantially the same, and assuming that that is the fact, then I will take their names and put their names in the record under the stipulation; and rather than strike the testimony, I will leave it in, and then you can argue its effect when all of the evidence is in. At the same time we would not be leaving a void in the record by striking it out and run the chance of somebody disagreeing with me later on, assuming that the question arises, and having to go over the same thing again. As it is, by leaving it in the record, you can contradict it insofar as it needs contradiction.

I may say for the record that so far as these papers are concerned, they contain no statement as to any relationship between Mr. Hamilton and

others. They merely refer to Mr. Hamilton as participating in the profit, and mention Brunson and Bunch as the persons to whom the money is to be paid.

Mr. Utley: We are willing to stipulate that these other witnesses, if called,——

The Court: I am assuming not all, but some would testify. You can designate them, and then that you will so stipulate. Then the evidence will remain, as I have already denied the motion to strike, and Mr. Utley need not repeat the motion now, but then it will be left for legal argument at the conclusion of the case, as to what, if any, inference may be drawn legitimately from this testimony.

Now, if you want time to consider that, I will declare a short recess, because we ought to dispose of that, and then we will go back to the cross-examination of Mr. Williams.

Mr. Lane: Yes, that will be very good.

The Court: All right.

(A short recess was taken.)

The Court: All right, gentlemen, what is the status of the stipulation?

Mr. Lane: We will stipulate that this list containing 28 names are the ones they say will testify the same as the doctor has testified to, excepting that the amounts of investment are different.

The Court: That is right, are different, and reserving the same objection already made.

Mr. Allen: Reserving the same objection already made.

The Court: Very well.

The Clerk: Shall I read the names, your Honor, and have the witnesses excused?

Mr. Lane: I don't think it is necessary. They can all be excused, including the bank witnesses, and their names are not on there. There is no use of keeping the bank [98] here.

The Court: Then you had better state the persons who are not excused, and the remainder may be excused unless they want to remain to hear the case. I will read the list for the record, if I may have that.

(The list was handed to the court.)

The Court: It is stipulated that the following persons, whose names have been given to the court, would testify substantially in the same manner as the witness who just testified, Dr. Donahey, except that their investments were in different amounts.

I will read the names and the amounts, or I will give this list to the reporter to copy, and those that are scratched out will be left off. There are 29 names, and No. 2 and No. 8 have been scratched out. [99]

* * *

Mr. Allen: Mr. Perryman, Mr. Redpath, Mr. Worthman, Virginia Kerr, Dr. Crawford, Sam Campbell, Nellie Fath, Mathilda Riggs, Mr. Mires, Mr. Pressler, Arthur Smith, Tom Rockwell and Leona Rockwell, and Mr. Hamilton's son, Wilbert H. Hamilton, are here, too.

The Court: What about those?

Mr. Lane: It will be all right to let them all go except Virginia Kerr, and perhaps she can be where we could call her.

The Court: We can conclude the cross-examination this afternoon and you can bring her back tomorrow and put her on.

Mr. Lane: She was Mr. Hamilton's secretary. She could be called on the phone.

The Court: All right.

Mr. Willard: What is the position as to these last witnesses? Are they subject to this same stipulation? What about the fourteen last called off?

The Court: We haven't decided on that yet. Do you want them on call, or just the secretary, or what?

Mr. Lane: We would like to have them on call, if we need them. I don't anticipate that we will, but we might.

Now, in regard to Virginia Kerr, I understand she is not Mr. Hamilton's secretary now, but if she can be on call, [102] why, we can call her if we need her.

Mr. Willard: I think your Honor might ask as to these fourteen people: what do you expect to prove through them?

The Court: Yes, if you might indicate the nature, we might do that, to save time. Also, I want to say that I am not going to stop the trial in order to get witnesses who are on call.

Mr. Lane: Yes.

The Court: Somebody has to be discommoded, and I do not want to have anybody get the impression that this is a country club where you can leave your name and you are called. People have to be discommoded in order to come to court, but I don't want to discommode too many at one time, if we don't need them. That is my only object. We have to be reasonable men.

Mr. Willard: We also have to consider, your Honor, the timing of this case, because, after all, we are now at the end of Tuesday afternoon, and we have had notice that we must finish by Thursday night.

The Court: Yes, this case is not going to last beyond Thursday. We will keep longer hours than we are today. Unfortunately, I have had to dispose of some matters and I have had to work in chambers. I haven't left my chambers since this morning. Fortunately, I don't eat any lunch.

Mr. Lane: Well, if the court please, it may or may not [103] be necessary to call them, depending upon Mr. Hamilton's testimony, but we wouldn't have time to call all of them.

The Court: The point is not to have all of them come back. Are there any of those that you are going to use tomorrow?

Mr. Lane: So far as we know, we won't use any of those, probably, because we can probably establish what we want when Mr. Hamilton takes the stand. That is with the exception of Virginia Kerr.

The Court: All right.

Mr. Lane: Now, as to the others, if we should need them, we can get them by telephone, and I am sure they will co-operate.

The Court: All right. When do you want Virginia Kerr to come back here? Where are you, Miss Kerr?

Virginia Kerr: I am Miss Kerr.

The Court: Where are you employed?

Virginia Kerr: I am employed on Vermont Avenue right now.

Mr. Allen: We are willing to put her on out of order and be through with her. Then we have nothing to worry about.

The Court: I tell you, you come back tomorrow at 2:00 o'clock. If they haven't reached you by that time, I will make them put you on anyway. The others will be excused [104] with the understanding that if you are notified by the clerk that you are needed, you will come here. Is that correctly understood by every one of you, that if the clerk calls you, and you have seen him and heard his voice,—if he calls you and tells you you are wanted, that you are to come down as quickly as you can? With that understanding, you are excused, and Miss Kerr is excused until tomorrow afternoon.

A Voice: Your Honor, my wife and I were subpoenaed, but we haven't received any fee for testifying.

The Court: The government has nothing to do with that. Counsel has to advance the fee, and if he hasn't paid you, you will have to talk to him.

Apparently, you didn't demand a fee. You should have demanded your fee at the time.

The Voice: We didn't know about it.

The Court: All right. You may proceed.

Mr. Lane: We will go on with the other witness.

The Court: My clerk calls my attention to the fact that while I have given the names, we haven't got the stipulation. There is no stipulation as to these fourteen additional names. Now, let's get that. Gentlemen, is it so stipulated?

Mr. Lane: Yes.

Mr. Allen: Yes, reserving the rights that we stated.

Mr. Lane: That includes the written documents; in [105] other words, the letters that were introduced.

The Court: That is right. Similar letters?

Mr. Lane: That is right. [106]

* * *

The Court: Let us go on and do the best we can.

Mr. Slate: If the court please, that brings up a matter which I think we ought to take up at this time, in view of the court's statement just after adjourning and just before leaving the bench, when you made the statement that if necessary we would proceed with night work in order to finish this case, because it had to be finished tomorrow, otherwise you would declare a mistrial.

The Court: No, I didn't mean that. I did not

state that for the record. That was a slip of the tongue. I did not intend——

Mr. Slate: Later you did correct that.

The Court: I had in mind this is not a jury case in which you cannot continue it. What I meant to say was that the case would be continued to a later date after my return. That is all I meant.

Mr. Slate: In view of that, I would like to say this, if the court please, that I feel that I do not believe the court is fully apprised of the—you might say the immensity of this case.

The Court: I am not interested in any argument on the immensity of the case. I announced yesterday when we began this case that all I have to give to this case is three days. After that time if you gentlemen felt that it could not be tried, you should have said so. That is customary. It is customary in my court, and this is not the first instance where a judge, because of prevous engagements made a long time ago, has to go away. I was requested as early as March of this year to go to San Francisco to help there in work on a special case, and I was assigned for that purpose. I am not going on a vacation, and I am going, so that I cannot give you more than today and tomorrow. If you are not finished, then the case will have to be continued until after my return, and we will take up where we left off, and that is all there is to it. If you feel that possibly I may have forgotten the evidence, you can call my attention to it in oral arguments or in briefs that may be filed, or give me a transcript.

This is not the first time that that has been done; many cases of that have taken place. We have a very busy court. At times, for instance, cases have been continued because the judge had to go into criminal work, and that work cannot be continued. So my statement to you is nothing unusual.

Mr. Slate: No.

The Court: So we are going on and go as far as we can.

Mr. Slate: There was one other statement you made, and of course that is clarified now. You made the statement that you would declare a mistrial or send it over to some other judge.

The Court: Oh, no, there is no possibility of any other [211] judge trying it.

Mr. Slate: All right. That is, as I say, clarified by your remarks now.

The Court: There is no other judge to try it. Furthermore, I would not waste three days and send it to another person. There is no judge to try it. It is customary for us to transfer cases from one to the other, but last week while I was trying a very important trademark case which requires the writing of an opinion, there was filed in my court a petition for habeas corpus, that had to be heard immediately, because there was an officer from Colorado waiting to pick up this prisoner and take him to Colorado. I went to Judge McCormick and tried to have him find a judge who would take the matter. There was no judge available and I had to hear it and do the best I could. In other words,

we are in a very busy district. My calendar is current, but the only way I could keep it current is by cooperation between counsel in saving my judicial time. Now you are wasting 15 minutes of that time for nothing.

Mr. Slate: I would like the court to hear my statement, because I have another point to call to the court's attention.

The Court: I don't want any further statement. The case is going too slow.

Mr. Slate: You mean then I may not even state the point? [212]

The Court: What is it that you wish to state?

Mr. Slate: I think it is very material, your Honor. I wanted to point this out, that in the first place this lawsuit will take about four weeks to try.

The Court: It was not set for a four-week trial. You informed me that it would not take over two or three days, when a jury was waived.

Mr. Slate: Now, if the court please, I did not do that, because, for your information, I have never appeared before you.

The Court: Well, counsel, when I say you, I mean other counsel in the case.

Mr. Slate: But not on my side of the case.

The Court: This case was continued. When we first agreed on the setting, it was understood that if a jury was waived the case would not take very long, and the setting was continued to a definite date. I don't know, I can't remember why it was continued from that time.

Mr. Slate: I would like the record to show that it was continued at the request of our opposing counsel and over our objection.

The Court: All right. There is no further statement. This case will go on until I decide what is to be done. This court was never informed that this case would take four weeks; otherwise I would not have taken this trial. I made the statement [213] when we began yesterday that this case is set down for three days, and that is all I can give it, and at that time no statement was forthcoming on your part.

Mr. Slate: That is right, your Honor.

The Court: I do not propose to waste a day and a half I have taken up with this. If you are going to suggest a continuance, I will not give it to you.

Mr. Slate: I am not suggesting a continuance. I haven't had the chance to make the point that I want to make, and that is, I wish to call to the court's attention what I believe to be a very material fact which should be taken into consideration, and that is this, if the court please, that there are in excess of $100,000 in voidable preferences here. One of the persons who took a substantial voidable preference has died, two persons have died that are involved in this bankruptcy. Now, you spoke today about continuing the matter and I assure you that I believe that I am correct that is the first time anything was said about continuing it clear over to the latter part of November.

The Court: Vacation month has come. We have made a rule recently that no regular calendar would be held in July. If I had not promised and did not have the designation to go in July I would go on with the case. We cannot get a trial in any other except the criminal department in July. Under the rules you are supposed to inform me in advance. I have [214] been holding the time for the last two weeks, and I have had no statement, and I informed you before that I was going away.

Mr. Slate: That was our first knowledge when I told you.

The Court: But this case was not set for four weeks and I did not know it was a four weeks case. If I had known that it would be a four weeks case, that would involve making proper arrangements.

Mr. Slate: Now, if your Honor please, I would like to point this out: The auditor's report prepared by the CPA is 224 pages and it consumed eight months of the CPA to prepare that report. Now there is 224 pages of that eight months CPA report that was paid for out of the funds borrowed by the petitioning creditors here. As I told you, there is in excess of $100,000 in voidable preferences which are being scattered and getting away, your Honor. We didn't know this was to go over until the latter part of November, and there was no way of knowing. The sum of $25,500 was paid out directly by Hamilton on September 18, 1947, and this action was filed a few days later. In other words, certain letters show that he paid that out because he knew that our action had been filed.

The Court: Well, all right. Have you any motion you wish to make?

Mr. Slate: No. [215]

The Court: Do you want to make a motion or what do you want to do?

Mr. Slate: I wish to say this further, that out of that there was $2483.35 which Mr. Hamilton paid directly into the private trust account, and we have 11 witnesses that we know of that will be called in addition to Mr. Hamilton, and when I tell you that it will take four weeks, I think that is a very accurate statement of what time will be taken.

The Court: All right. Have you completed?

Mr. Slate: No, I have not, your Honor.

The Court: What is the idea of taking my time up for an argument? Do you have a motion in mind?

Mr. Slate: I also wish to state this additional point, your Honor—yes, I do have a motion in mind.

The Court: What is it, may I ask you?

Mr. Slate: First my motion is this, that when you adjourned at the recess there you said you were either going to send this to another judge——

The Court: No, I don't think so. I would not send this case to another judge. Furthermore, there is no other judge available who will take this case. If this case is not completed tomorrow night, I will continue it to the earliest date I have on my calendar.

Mr. Slate: Very well. [216]

The Court: Just a moment. I called the calendar last Monday and set cases until the end of October. Those cases have preference, because I never was told that this case would take more than two or three days at any time. Therefore, we will take as much testimony as we can and it will be continued until that time. If you want to stipulate that the depositions may be taken of such witnesses as you may feel may disappear, I will agree to that, but I will not make any definite order until later on.

Mr. Slate: Now, the other point that I was coming to, Judge, I think is very material. That is this, that the Referee in Bankruptcy has refused to appoint a trustee. He has taken the position that he will not appoint a trustee in this case until after this matter has been heard. Now, it has been under him nearly a year. If it is continued over it will go over beyond a year. In that time, without the appointment of a trustee, I am in no position to go after these voidable preferences and I pointed out to you they are being scattered. So I submit, if the court please, that under the present circumstances we are suffering irreparable damage. I say that is demonstrated now on behalf of all creditors.

The Court: There is a method of reaching that. You can make an application for appointment of trustee and make a showing, and then if he makes an order refusing to do it, then [217] you can file a petition for hearing. While I will be gone, there will be other judges present here who are required under the rules to make an arrangement for such

a situation. I have been working day and night, long hours, in order to clean up this work. I was here until 12:30 last night working, not in this matter but in other matters that had to be gotten out, and I am surprised to hear for the first time that this case will take four weeks, and I state for the record that at no time from any statement was I informed, after the waiver of the jury, that this case would take more than three or four days. Had I known that, I would have set it and I would have cleared the calendar for that purpose.

Mr. Slate: I can only say this, your Honor, that I was not in town on the date that the continuance was got, so I don't know what was said. That is what I understood.

The Court: I have stated my views. We will go on and take whatever testimony we can, and then when we have concluded the day tomorrow I will consult with you as to what is to be done, and we will decide the date to which it is to be continued. I cannot be in San Francisco and here. I am entitled to a little vacation, and I have to be in Seattle early in September, because that is obligatory. There will not be a judge here the first two weeks in September except an outside judge, because it is obligatory on all of us judges to attend the Conference. The first time I will be back here [218] will be September 13th, and I have already set cases until the middle of October, I have a case set in November, and I have thought that in between I could put you in. But I would not disorganize 15 cases

in order to take care of a contingency of which I was not informed. It is the duty of the counsel to suggest to the court when the case is set, and the trial judge should be informed approximately of the time. It does not mean that the case is not completed because it takes longer, that is not the point, but we are reaching vacation and I have committed myself and have the order of the Senior Circuit Judge assigning me to San Francisco; I am supposed to be there tomorrow. Cases are already set. I arranged last week a pre-trial hearing to be held there. So it is humanly impossible for me to go on and finish this case, so the only other thing to do is to continue it until I am ready. I cannot send it to another judge, because there is no other judge available who could take it at this time. There is no judge who could try this case before November anyway, if I sent it to another judge. Besides the Referee in Bankruptcy will place a lot of burdens on me, and I assume that your remedy, if you need some intermediate relief, is to go before the Referee, because I told you before, both of you—I don't know which of you, I can't remember who was present, and if I remember one person, I don't remember if the other was present, because there is always one [219] on each side. Mr. Willard has not been present at conferences because he recently came into the case, and whether you or Mr. Lane were in the conference, I don't remember. One of you or the other was at every one of the conferences. I told you at the time

that this case still remains in the Referee for all purposes, that the only thing I have taken over is this, and you heard me state it again yesterday, and when I got through the only question I have to determine is whether there is bankruptcy and whether these acts of preference have been committed. Then the case will go back to the Referee for administering.

Mr. Slate: Very well.

The Court: I can't agree with your conception of the case, as to what you have to prove in this case. All you have got to prove is insolvency, and in this case that he is a partner.

Mr. Slate: Very well, your Honor. The point was that, I think your Honor will agree with me, that it was my duty to try to get the matter disposed of as quickly as possible.

The Court: I have not interfered with that duty. There has been no congestion of my calendar. The continuances were made at your request. I have not asked this case to be continued at any time.

Mr. Slate: That is right.

The Court: I declined last week to set a matter down because [220] it would have consumed some of the time scheduled for you.

Mr. Slate: Very well, your Honor. But, as I say, the point is that I was not casting any aspersions on the court, and I hope you didn't think so.

The Court: Well, I want the record to show in this case that at no time was I informed when this case was set originally at the present time that it would take anything like three or four weeks.

I made the statement yesterday I had only three days, and no statement was forthcoming on your part. If you had said to me yesterday morning that you doubted this case could be concluded in less than three or four weeks, I would have told you at that time that you would have to go to fall. But now that I have taken a day and a half and have clarified the issues, I don't want to waste the time that has gone on. We are going to work the hours I will designate, and then at the end of the hearing if we have not reached the end I will determine when we will hear the balance of the testimony. It may be they will stipulate to take the depositions of some of the witnesses who will testify, although you are entitled to some presumption that any conflict would be resolved from hearing the witnesses, because if you take it all by depositions then there is a record you can call attention to, whichever way I rule in this particular case. [221]

This has not been a pleasant case for me to try. I should say both sides have contributed to it. There has been so much feeling here that the Referee declined, without consulting me, to hear a lot of matters. I have to hear them and to act as peacemaker in the matter and to secure a lot of cooperation in the case, and I should not be put in the position at the present time as though it was the fault of mine that the case cannot go on. It is no fault of mine whatsoever. This case was set without any information to me at any time that it would take more than three or four days to try. So I will

say nothing further about the matter, and we will go on until I see we are ready to continue. I might defer my trip to San Francisco for a day at least if I felt that it could be concluded on Friday. I cannot get away from the assignment without disorganizing that District, and that is a part of our District. I am not taking a jaunt to New York to see the plays and try a few cases to have an excuse to be there, although I have an excuse to be there, I have a daughter in New York. I would rather go to New York myself, but I cannot go to New York, I have to help in the work of the District which is a part of our Circut and a District from which we have borrowed judges to help us. It is true I could have refused, but I can't refuse now the assignment that I accepted in March, especially when counsel have been so neglectful of their duty to the court as not to [222] inform me of the length of time that this case would require. I jot down in every case the possible length of time it will take. Sometimes I underestimate, but it is inconceivable to me—I should say this was a case that would take three or four days, and I think it never ought to take three or four weeks. I have eliminated one issue through stipulation, but I am afraid you could not secure a stipulation from the other side stipulating what 28 witnesses would testify. Let's go on. [223]

* * *

The Court: All right, gentlemen. Have you reached any agreement?

Mr. Willard: No, your Honor. As far as our side is concerned, we are, as I stated before, wholly opposed to it, for the following reasons, among others: In the first place, in the month of April your Honor is perfectly correct, you stated very clearly that you could not see where this case should take over three or four days, and nobody contradicted you, and I think you mentioned something about the 1st of July being a date on which you would not be here, so there was no discussion on that. Your Honor is perfectly correct.

Now, at that time we waived a jury and we waived that, not in front of any other judge of this court, but before your Honor, and we do not propose to be transferred to any court except to your Honor. We are certain at least that we have expected your Honor to try this case. Yesterday you saw some 50 of Mr. Hamilton's friends and clients in this court room under subpoena. You saw 46 of them and excused 28 subject to a stipulation of their testimony. We have an action [242] here in which they say they want three or four weeks to try, and it is inconceivable to us, and it shows, as we have urged, that we don't know what they possibly could do with the time except to try to smear and throw some more rocks at Mr. Hamilton, which your Honor has very wisely attempted to knock out of this case. I don't think there is anything in the accountant's report, 240 or 2400 pages, which is going to influence this court in the determinaton of partnership. We have before us four petition-

ers. On the testimony already adduced, two of them are not clients and did not even know Hamilton, they are clients of Mr. Williams in a similar trust. One of them, Mr. McClyman, who is a very decent fellow, is now testifying, and when he gets all through, your Honor will appreciate that he invested the $1,000 with Mr. Brunson's firm, that Mr. Hamilton had no connection with at all.

Another gentleman named Urie is the fourth petitioner. I don't think your Honor will ever see him in the court room, although I fondly hope that you will, because I have a few well-chosen questions I would like to ask that gentleman. I don't think he will be here for the asking.

The Court: Let us not cite your reasons. I just want your word on the matter.

Mr. Willard: That is a reason, and a further reason is that we have now arrived at a point in this case where I believe [243] it is of the utmost importance that it stay right with your Honor. Your Honor is reputedly, and so correctly so, a man who likes the technical side of the law, and there are technical points here. Realizing your Honor's capacity for that, we have joined in the waiver of a jury.

The Court: Thank you for the compliment. I merely wanted to show my willingness, in view of the fact that when we were talking off the record and as I was leaving the bench I said something about sending the case to another judge, and counsel immediately seized upon the possibility, and

I went on to tell them how under the rule it could be done, because I have no desire to try a particular case. So far as this is concerned, it is one of thousands which in 21 years I have tried, and one case may have more more interest than another, but ultimately it is just another case. I don't know Mr. Hamilton, except that he has appeared before me in my long career on the bench. As far as you are concerned, you only came in the case recently, you tell me you didn't appear. This young gentleman has appeared, but I don't know whether they have appeared before me or not. I don't know any of the litigants. I don't know any of the parties. To me it is just another lawsuit, and when counsel seizes upon an informal statement that I made to emphasize a point at that time, I wanted them to know that I am not particularly interested in keeping the case, if there is any legal method without putting them in the position of telling me that I must transfer the case, without swearing to an affidavit of disqualification, that for some reason I am prejudiced against their client, which of course they can do if they can truthfully swear to such an affidavit.

Mr. Willard: Your Honor, I was not seeking——

The Court: I was going to tell them that I would not stand on ceremony, if that is agreeable, and I will send the case out and let them start all over again, but I do not want to be put in the position as having intimated that I would send it, because, as I told them, this is the only rule under

which I would, if you both agree, then I will send the case back in there and assign the case back to the calendar and it will go into the hopper.

All right. There will be no agreement.

Mr. Willard: May I state, your Honor, that pursuant to your Honor's statement, one of the difficulties I am in is I have definitely planned to leave the city, under plans which cannot be changed, on Friday morning.

The Court: All right, let us talk about that tomorrow. Let us go on and see how far we can go anyhow, and I will try to find as early a date as I can in the fall. I cannot disorganize the calendars set for six weeks to shove this case in, because this case is not entitled to priority except on one condition. If counsel informed the court in advance that [245] it was likely to take not three or four days but three or four weeks, and we had started and continued and it had taken six weeks or a month, then of course once having started to try, they are entitled to go through, since counsel had not intended to do it at all. As a matter of fact, the same situation arose in San Francisco. When I was in Fresno in March of this year, Judge Rhodes informed me that the case I was going to try there would take three or four weeks. Counsel in another case, whose San Francisco associates were also to be in that case, because it was also an antitrust case, stated in open court more likely it would take three or four months. My assignment to San Francisco was for a month, and when I got

it I read it and I said if it is going to take three months, I am not going to quit in the middle of a case, and I know, of course, that it is going to be continued a long time, but I will stay as long as is necessary.

I admit counsel are not the only ones who made an underestimate. On the other hand, the case has no priority. Therefore, I will follow the procedure outlined. If you do not finish tomorrow night, then the case will be continued, and I am sure that counsel have enough ability to refresh my memory if in the meantime I have lost track, or it would not cost $75 to transcribe the testimony other than the documentary evidence, to write it up so that counsel will have it and when they argue they can make sure that the testimony [246] of the witnesses is called to my attention.

All right, there will be no further, gentlemen. I am going to say nothing further and I don't want anybody else to say anything further about this. I will consider your suggestion, and if you have not finished by tomorrow, I will designate a date when the case is to be continued to. [247]

* * *

The Court: Gentlemen, let us get away from this idea that I am trying a question of fraud here. I am not trying [352] a question of fraud or anything else. I am trying to establish if there is a partnership and who composed it and if it is insolvent.

* * *

The Court: Maybe counsel will stipulate that those investors that you have are going to testify similarly to the manner in which some of the preceding ones have testified, to the effect that they made investments, and then there can be a statement to that effect. We already have a sample of one of the witnesses and we have another sample of the lady who just preceded. If that is the testimony, I don't know why we should encumber the record with a lot more exhibits, when the matter could be covered by stipulation.

Mr. Lane: He is not one of those groups.

The Court: Where is he? [434]

Mr. Lane: Mr. McClyman has apparently left, your Honor. He has been here for three days, right here.

The Court: Well, that is all right. This is a long case. He had the disadvantage that he was under subpoena and not discharged.

Well, have you any other witnesses?

Mr. Lane: That brings us to the place, your Honor, where we subpoenaed in these four witnesses, expecting to put them on, plus the cross-examination of Mr. McClyman.

The Court: You said you had altogether 11 witnesses. What were the other witnesses like?

Mr. Lane: Yes, but we didn't tell them to be here today, due to my experience on how fast we would get through this afternoon. That is entirely my fault.

The Court: All right. What are they going to

testify to? I am trying to see if we can get stipulations.

Mr. Lane: We don't intend to put on any more of the original investors, that is what——

The Court: What is the nature of the testimony that they are going to give? I want to know, in view of what action I am going to take in regard to the matter.

Mr. Lane: Your Honor, we are asking to produce Mr. Urie, who has not taken the stand, and we would like to have him testify concerning representations made to him. He lives in Santa Monica, and we had four plus the cross-examination [435] of Mr. McClyman.

Mr. Willard: I think the question that the court is concerned with is what is this man going to testify to.

The Court: Gentlemen, what I had in mind was this: As the case is going now, I cannot see any reason why this case would not be completed in a day, no matter how wide your cross-examination is, and in view of the fact that you gentlemen protested so vociferously at a long continuance you will have to have in the case, I am considering whether I can finish the case, in which event I might delay my departure for a day. After all, a day will not make much difference. I cannot see any three or four weeks remaining for this case.

And then, of course, after the facts are all in, ultimately Mr. Hamilton on cross-examination under 2055 or under our Section 43(a) is going to tell the same thing he would on direct, and then

in the Superior Court I used to have them stipulate that the testimony given by a man given under 2055 should be considered a part of the defendant's case, and let them make such addition as they desire. Under the circumstances I cannot see why the case would not be completed tomorrow, so far as the presentation of the facts is concerned, and in that manner I will have it all before me and you gentlemen can brief the matter, and, of course, I can read the briefs whether I am here or whether I am in San Francisco. [436] I am trying to accommodate you because of the situation in which I find myself, due to no fault of my own.

Mr. Slate: Your Honor, we want to get it through as soon as possible, and we would like to finish it tomorrow.

The Court: I cannot see why it can't be finished tomorrow.

Mr. Slate: Here is the reason: our further evidence has to do to a great extent with an audit that has been made over a period of eight months by a certified public accountant, and it took me about three weeks to understand the transactions.

The Court: Well, you don't have to explain that all now. Counsel, here is the point. The rule of the federal court is this—pardon me if I seem didactic; although it is over ten years since I taught in law school, I still retain the habit—but I am merely indicating what the law is so that you may be guided by it. In the law in the federal court we have a very salutary rule, and that is that sum-

maries of public accountants are received in evidence upon their being identified, providing the books, the originals are available so that your adversary can consider them. I cannot see why counsel under the circumstances cannot stipulate to the summary. They can stipulate what the checks show, what money went in, what sums of money and where they went, and then the question of the inference to be drawn [437] would become a question of law, because I don't want the accountant to be a lawyer, I like them to keep their province. As a matter of fact, we have great difficulties with them, it is a difficult job to keep them within limits, because they will talk at the drop of a hat about discovering a 10-cent error. Their work is trying to discover somebody else's error. So I don't see that it is necessary or that it would even be permissible for you to go through that and take a week to explain to me what is in it.

Mr. Slate: Your Honor, the report after it finally came from the auditor and which we have gone through finally with the auditor's help, we have found a series of transactions, one right after another, during this pertinent period, all tending to show partnership and that Mr. Hamilton was actually the dominant figure in the business known as Brunson and Bunch.

The Court: All right; but supposing they stipulate, without admitting the conclusions, stipulate that this is a correct summary of these transactions as of their appearance in the book—that is all I

will allow you to do—not that I will allow you to do, but that is all that is necessary as a factual basis. Then the question of analysis is one which is a matter of argument for you to address to me either orally or in writing, and is one to be determined after the evidence is in. What I want to do is to get all the evidence in so [438] that there will not be that hiatus, and then you gentlemen can brief it and I will read your briefs, wherever I am, and determine the matter and if I believe that I need additional oral arguments, I will set a time for the argument when I get back in September. I can set some Monday for additional oral argument.

Mr. Slate: Your Honor, most of this money, or not most of it but a large block of this money, did not go through the books, was handled in cash transactions, cashier's checks and actual cash given, and cannot possibly be explained through the auditor's summary. I feel we will want to show that these transactions were not legitimate.

The Court: If they were not legitimate, that is an inference to be drawn. Let us talk informally. Let's talk off the record and see what we are going to do.

* * *

The Court: Page 20. Well, I am at a loss at the present time to understand what counsel is attempting to do. This is a trial on the question of bankruptcy. Of course, a statement made by a person reputed to be a partner may be received in evidence, but this is not a deposition. This is an

examination before the Referee. This is a trial before the court and I just cannot see how the particular statement, by a witness who was not present, who as I understand is in the penitentiary, can be brought in on the trial of this cause at the present time. If that is material, it can be brought in upon a showing that these are statements made by him. Then, of course, you may offer the portion and they have the right to offer the entire thing, but I cannot see how a statement made by—who was that? Brunson himself? [445]

* * *

Mr. Slate: If the court please, you will recall when we were up here before, counsel stated that the records of Mr. Hamilton would be made available and at that time the statement was made by us that we intended to question Mr. Hamilton [458] when court reconvened. Now, he has seen fit not to bring any of his records here. This is a very involved transaction.

The Court: Well, of course, I did not make any definite order that they be brought.

Mr. Willard: I don't recall any such stipulation.

The Court: There was no stipulation. I think it was stated that they would be available but, of course, no time was fixed for making them available and, of course, now he starts an examination and as the need develops we can tell counsel to bring those papers called for.

Mr. Slate: Here is where we need them, right now. The first egg transaction was extremely in-

volved. There was money going in and out of various accounts and we need their records. Will the court instruct Mr. Hamilton to bring them and make them available?

Mr. Willard: Your Honor, the situation as I understand it is this: Under order of this court we made available every record we have had for photostating and examination. They have everything we have and presumably have the photostated copies. We have no objection to bringing in our records to support the ones they have photostatic copies of, but it seems that they might as well use the photostats and copies. Presumably they are true and correct. They got everything we know about. [459]

Mr. Slate: But counsel——

The Court: Just a minute.

Mr. Willard: May I conclude, Mr. Slate? Now, this egg transaction you are speaking about is clearly beyond any time where they attempted to establish any profits. The only purpose I can see for it is to show whether they made any profit on the deal and whether or not there was any existing partnership at that time. They have everything we have in our hands. I might say the egg transaction was very, very profitable, but you may have some ultimate theory as to why that became so.

Mr. Slate: I don't think counsel's statement is quite correct. It is my understanding that all of Mr. Hamilton's records are not made available. I know they were not available to us. The auditor tells us that he was permitted to see some of them;

some of them Mr. Hamilton would read across the table and he has not seen them, much less have photostatic copies. Others Mr. Hamilton said he would make available and didn't and made no explanation why.

The Court: Well, suppose you proceed and I will tell counsel to bring the additional documents here this afternoon.

* * *

The Court: Well, I think we can dispose of this matter, gentlemen, in this manner: As to any documents of which no photostatic copies are in the possession of the petitioners, if they will—in view of the disclosure of my order and there has never been any objection that there wasn't any, I am not going to do it over again. I have taken judicial notice here, and I have permitted it because we always like to render any assistance—I see that a stenographer from the District Attorney's office is present here and is transcribing some of the testimony. That is a legitimate——

Mr. Willard: Exercise of prerogative. [512]

* * *

Mr. Slate: Will the court instruct the witness to bring those records to court tomorrow? [525]

Mr. Willard: They have photostatic copies of them.

The Witness: They have photostatic copies of them.

The Court: What?

The Witness: They have photostatic copies of them.

The Court: I am not going to make any order at the present time. I think this is developing into such a wide expedition here that we are duplicating everything that was done. You will have to show me as to each specific thing that you don't have a copy of or that this wasn't available to you, because I am not going to take an accounting here, as I told you before. If you want an accounting, I will send you to a master. But, I have to determine, first, whether there was an act of bankruptcy committed and whether Mr. Hamilton was a member of a partnership, before you get down to an accounting, and the object of this trial is to take evidence from which the court can determine whether a partnership existed.

Mr. Slate: What we are attempting to prove——

The Court: I know what you are attempting to prove. You cannot prove it on cross-examination by this manner. You have this witness under oath. He admits the check and I am not going to tell him to bring in the canceled checks. You are going to be ordered to ask him only on such documents as you have now.

Mr. Slate: That is all I am asking. [526]

The Court: As you have now and as you have had, and I do not see the materiality of the check itself.

Mr. Slate: That is what I am trying to show, we are trying to show if Mr. Hamilton has an interest in that partnership.

The Court: All right. He has admitted the checks. Then, what other matters are material?

The way the check is worded is immaterial. You are not bound by this testimony, so what time you are taking now is just a lot of waste of time, unless you actually get some more facts, and the man is giving you the best he can the facts as to the checks.

The production of the checks is not going to show whether it is a partnership account or not.

I am making no further order until you show me the materiality of each one of these items.

I can see now why you think it is going to take three weeks. At this rate it will take three months and we will get nowhere fast.

Furthermore, I wish you would instruct your various witnesses that you have subpoenaed and those in the audiences not to write letters to me. A lot of people are writing letters to me complaining about something—asking what to do, asking me what to do about circular letters that McClyman is sending out, and that is absolutely improper. I send them back, those that I receive. And I wish you would inform them [527] that you are conducting the litigation and that it is improper for anybody connected with either side to communicate with the judge; if they want advice, to go to their lawyers and not write me letters asking me what to do.

* * *

Mr. Utley: Just a moment, your Honor. Your Honor, how could this possibly be material to any of the issues in this case? And I object to it on that ground. Whether he received it or didn't receive it would not show whether or not he was a

partner, it wouldn't show whether or not he was insolvent. It has nothing to do whatsoever with the issues in this case.

The Court: Objection overruled. He has answered in the negative. Overruled. All right.

* * *

Q. (By Mr. Slate): Mr. Hamilton, did you bring with you check No. 1610?

A. I didn't.

Mr. Slate: Your Honor, that is the check which he was instructed yesterday by yourself to bring with him this morning, and the check book showing the voucher for it.

Mr. Willard: No, your Honor, that isn't the fact at all. It is a check concerning which he testified and explained, $82, and after he got through your Honor very pointedly said, and correctly, what is the use of producing checks and records when the man tells you what it is all about.

The Court: Yes, I said in view of his admission I did not think the presence of the check in court was necessary or would throw any light on anything.

Mr. Slate: What we really want to show there is that Mr. Hamilton out of his personal account paid a partnership debt. [621]

The Court: All right. You have his admission, what he did, and the check won't show any more than what it contains, and that is all there is to it.

Mr. Slate: Then, the court will not have him bring in that check?

The Court: You can argue that. I am not going to make any order in regard to that check.

* * *

The Court: Well, I have already indicated that is not the proper way to bring in the testimony of the person, but I am going to allow the question to be asked, if he heard the questions made. This is not an accusation that is being made where a man has to repudiate it. You don't prove a partnership that way. Furthermore, Rule 26 of the Rules of Civil Procedure distinctly provide for the taking of a deposition of a man in prison. Here is what it says:

* * *

Mr. Utley: Well, we make our motion to dismiss, on the grounds that there is a total lack of any evidence showing that the petitioning creditors' claims are fixed as to liability or liquidated as to amount; there is a total lack of any evidence showing that Mr. Hamilton is insolvent; there is a total lack of any evidence establishing the alleged acts of bankruptcy, and there has been no evidence offered, whatsoever, establishing claims fixed as to liability or liquidated as to amount of the alleged petitioning creditors, and no act of bankruptcy has been established which were not directly participated in by some of the petitioning creditors.

Mr. Willard: May we add to that, your Honor, that as to the petitioning creditor, Mr. Urie, there has been absolutely no evidence, period. He hasn't even shown his face in the court room.

Mr. Utley: Furthermore, there is no evidence to establish that Mr. Hamilton is a member of the alleged partnership of Brunson and Bunch.

* * *

Now, I think you are all familiar with my custom. I do not ordinarily have cases submitted on briefs. I prefer oral arguments in a case of this character where the matter [705] has been pending for some time.

It is absolutely important that the matter be disposed of as quickly as possible. I do not think there are any important questions of law that I am not familiar with in connection with this matter. If so, you can bring your cases and call my attention to them and I will read them as I go along, if they present any principle with which I am not familiar. So I want counsel to understand that I will be ready at the conclusion of the testimony to hear arguments to be presented by both sides on the merits of the case as to whether, regardless of whether we do it on the motions or whether we do it on the facts of the case, under the law and the facts as shown, as have been made, the respondent Wilbert Hamilton is a member of the partnership and an act of bankruptcy has been shown against him.

Kindly refresh my recollection as to what the status of the partnership is—I mean of the other two members of the partnership so far as the record is concerned.

* * *

Mr. Slate: Your Honor, such proofs of the actual bankruptcy as have been submitted during this trial have been wholly incidental, as we have been relying upon the point, as I understood it, that the sole issue before the court was that of partnership with Mr. Hamilton.

I call the court's attention to the record submitted into evidence through the auditor reflecting not only these payments, but several hundred payments within the past four months.

The Court: Well, if your auditor shows that, then, that is——

Mr. Slate: Yes, they are right there in the record.

The Court: Then you are going to rely on that. If not, you can open—of course, if Mr. Hamilton is not a partner, he is not in a position to do anything either to add or to detract from what Brunson and Bunch have done. If they wanted to default and have an adjudication against them—— [711]

Mr. Slate: That is what happened——

The Court: I cannot see how you can, by anything you do, set that aside.

Mr. Willard: We can't testify ourselves out of that position. We know that.

The Court: Yes.

Mr. Willard: If Mr. Hamilton is not a partner, we concede the matter is over with so far as he is concerned. It does not affect any act of Brunson and Bunch and, of course, insofar as any statement of the court relative to an issue of a partnership

being involved, there is no question but what it is a true statement, if that issue is determined adversely to petitioners, so far as Mr. Hamilton is concerned, we are out of the court room, because it has been established here by competent evidence that two of the petitioning creditors never saw Mr. Hamilton and did any business with him, and Mr. Urie hasn't come in to prove anything.

Mr. McClyman had $1,000 with Mr. Hamilton, got it back from him and put it back; and that is the only transaction he ever had with him.

Mr. Slate: That statement is not quite true.

Mr. Willard: That is absolutely true, 100 per cent; 100 per cent; the testimony shows it.

The Court: Well, just a minute. As I say, I don't want [712] to prevent you from arguing any point you can, so far as Hamilton is concerned. You know, you are not required to rest merely upon the issue of partnership, if you want to deny the sufficiency of the proof so far as Mr. Hamilton is concerned. You may, without affecting the default of the other parties, make such argument upon the basis of the facts in the case. At the same time, counsel may rely on whatever the exhibits show as to the purview of insolvency of the partnership and any preferences to the parties, as to the parties, named or others.

Now Mr. McClyman has testified, so his evidence for whatever it is worth is in the record.

Mrs. Sauers has testified.

Now, what others have you? How about this

Strutzel and Coiffi? I don't know how to pronounce those names.

* * *

Mr. Slate: Do we have a ruling of the court as to whether or not that is an issue before the court?

The Court: Which?

Mr. Slate: In other words, the insolvency. Am I correct, [720] the only issue is the partnership in this proceeding?

The Court: Well, as far as Hamilton is concerned, he may take the alternative attitude and claim that—you see, I have to change my views as I get additional information. Here I find that he does not declare him as a creditor. He says he may be a creditor and just as McClyman may have been and he says he may be a partner, and so it is up to you whether you want to rely on the record. He is entitled to a finding on the issues tendered by the answer and in his answer, let us look at the answer again.

Mr. Utley: I think the issues are governed by the pleadings and he has answered.

The Court: That is right, the issues are governed by the pleadings. That is true. Let us look at the answer. Now, at the time that this petition was filed there had already been an adjudication, on November 13th. On November 13th there is an adjudication by Referee Dickson in which it recites:

"The first amended petition of George M. McClyman," and so forth, the others——

"It appearing that said partnership has not filed in said proceeding any pleading or answer to said first amended petition, and

"It appearing that the time for pleading or answering said first amended petition expired on the 12th day of November, [721] 1947, and

"By reason of the foregoing, it appearing that said partnership has thereby defaulted in said proceedings;

"It is adjudged that the said Brunson and Bunch, a partnership, is a bankrupt, under the Act"——

So, all right.

Now, you have got that adjudication. I think that that was just on the schedules. That was not listed as a separate filing. I think they just used that as a means of filing schedules.

* * *

The Court: Well, they are not two partnerships. It is a partnership called Brunson and Bunch and the question is of whom does it consist? The court has found that the partnership is a bankrupt and has made an order.

Mr. Utley: But here is the situation. Mr. Hamilton says he is not a partner and he says he is not insolvent. Now, before that question could be determined—suppose for example that Mr. Hamilton should be found to be a partner, that would be possible and yet the court might not be able to hold that the partnership is bankrupt due to the fact that Mr. Hamilton might be worth a lot of money.

* * *

The Court: Just showing that a man is gullible does not make the other man a partner. He would not be the first one. You know the profit motive or, as an English economist popular about 25 years ago called it, the acquisitive motive, is very strong and it is very hard to explain what people will do, dominated by the acquisitive motive, and what they will do if they win or if they lose. All of a sudden people want to make money. When they lose money they want everybody in jail and everybody in the penitentiary, especially women. So we are not here to determine or designate the limits of [767] the motive, the "acquisitive motive." All of these people went in with the idea of making money. The question is, did they go in believing or not believing, with the understanding that Mr. Hamilton was a partner and they were to look to him for these guaranteed profits, or was he just an intermediary who, with their knowledge, was getting 10 per cent for acting as intermediary between them and these great investors who were turning everything into gold by preying upon the needs of the people.

Mr. Slate: Our position, your Honor, is that irrespective of the representations to the third parties Mr. Hamilton was actually a partner.

The Court: I understand your contention but I am saying that this inquiry, reliance upon a pertinent statement, doesn't make him necessarily a partner. A man may trust a lawyer and then be disappointed in the trust but that doesn't make the lawyer a partner. Many people have entrusted their funds to lawyers only to be disappointed be-

cause lawyers—some have been successful in being businessmen; some of us never touched the realm of business because we didn't feel that they combined —others, more modern, combined law with financial ability and became leaders and heads of big corporations.

You will notice that every big head of every big utility corporation is a lawyer who has reformed and become a [768] financier. The Edison Company, all the big title companies and everything else, they are all lawyers.

Now we are not here to determine as to what is right or what is wrong in that respect; we are here to determine whether these people dealt with Mr. Hamilton as a partner and whom they were to look to for their guarantee. All the evidence of this witness is to the effect that he was getting a profit, which was separate and apart, and it was delimited. There were three partners, the investor, the company and the agent, the broker, and the broker was Mr. Hamilton. He was getting 10 per cent, the others were getting 50 per cent and the investor was getting 40 per cent.

So you see, so far as this testimony is concerned, it does not add any strength to your case and the cross-examination does not lead anywhere because this man testified that he knew exactly how these were to be divided. Of course if I deal with a man knowing that he is making a profit which is distinct and apart from the third party who makes the investment, it can be argued I believe that he is a partner. But partners don't divide profit that way.

If this man—I am not saying the evidence, I am merely summing up the testimony of this witness—if Brunson and Bunch was a partner with Hamilton then of course the division would have been 60 to the partnership and 40 to him. The very fact that Mr. Hamilton's 10 per cent was denominated distinctly from that of the partnership [769] showed, so far as this man was concerned, that there was no representation of partnership.

* * *

So those are the tests by which we have to judge this evidence. The question before us is whether these sporadic contracts, or this series of contracts, showed the assumption of obligations as between Hamilton and the other members of the partnership which have all the indicia which the code and the rules of law provide for determining the establishment of partnership.

* * *

[Endorsed]: No. 12183. United States Court of Appeals for the Ninth Circuit. George M. McClyman, Elizabeth Spencer Sauers, Elizabeth Brau and Willis N. Urie, Appellants, vs. Wilbert C. Hamilton, Appellee. Transcript of Record. In Three Volumes. Vol. 1. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 14, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12183

In the Matter of:

WILBERT C. HAMILTON, Individually, and the Partnership Known as BRUNSON & BUNCH, Composed of WILLARD E. BRUNSON and DEON BUNCH and the Said WILBERT C. HAMILTON,

Alleged Bankrupts.

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL

Come now the appellants, and herein specify the points upon which appellants intend to rely on appeal in the above-entitled matter, as follows, to wit:

(1) Error of the court in excluding evidence offered by petitioning creditors to establish fraud and deceit practiced by the respondent, Wilbert C. Hamilton, upon the petitioning creditors and other creditors of the partnership of Brunson & Bunch.

(2) Error of the court in excluding evidence offered by petitioning creditors to establish a general plan and scheme on the part of the respondent, Wilbert C. Hamilton, and Willard E. Brunson and Deon Bunch to cheat and defraud the petitioning creditors and other creditors of the partnership of Brunson & Bunch.

(3) Error and misconduct of the court in direct-

ing the court reporter not to report certain remarks of the Court made during the trial.

(4) Error and misconduct of the court in the court's ruling and statement that the court reporter belonged to the court and that the court reporter need not report all of the remarks of the Court or all of the proceedings before the court, but need only report what the court ordered the reporter to record and report during the trial of the proceedings.

(5) Error of the court in its finding of fact, finding and determining that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, George B. McClyman, in any amount whatsoever.

(6) Error of the court in its finding that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Elizabeth Spencer Sauers, in any amount whatsoever.

(7) Error of the court in its finding that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Elizabeth Brau, in any amount whatsoever.

(8) Error of the court in its finding that the respondent, Wilbert C. Hamilton, is not indebted to the petitioner, Willis N. Urie, in any amount whatsoever.

(9) Error of the court in its finding that the respondent, Wilbert C. Hamilton, is in no way responsible for the actions of the members of the copartnership of Brunson & Bunch, to wit, Willard

E. Brunson and Deon Bunch, in regard to the commission by the said co-partners of any of the acts of bankruptcy alleged in the Amended Complaint (Petition).

(10) Error of the court in its finding that with reference to the dealings between the respondent, Wilbert C. Hamilton, and the partnership of Brunson & Bunch, each transaction was the subject of a special agreement and that no other representations were made by the respondent to any of the clients (investors).

(11) Error of the court in its finding that the petitioning creditors are not creditors of the respondent, Wilbert C. Hamilton.

(12) Error of the court in its finding that the accounts of the clients (investors) were kept in the books of the partnership, and the profits which the respondent received amounted to ten per cent, and were separate and distinct from the profits of the partnership; that such profits were "so entered upon whatever books he kept."

(13) Error of the court in its finding that no control was exercised by the respondent over the conduct of the affairs of the partnership.

(14) Error of the court in its finding that all that the respondent had was the promise of a certain percentage of the profits, the amount of which depended on whether the money invested belonged to a trust in which he had an interest, or belonged entirely to clients.

(15) Error of the court in its finding that the respondent Wilbert C. Hamilton was never associated with Willard E. Brunson and Deon Bunch in any co-partnership relationship of any kind or nature whatsoever.

(16) Error of the court in making findings of fact and drawing conclusions of law from such findings of fact, which findings of fact and conclusions of law are and each is outside of the issues, and not within the issues framed by the pleadings in the case, and each and all thereof being unsupported by the evidence admitted in the case.

(17) Error of the court in its finding that Wyman G. Reynolds, attorney at law, appeared in the trial on behalf of Willard E. Brunson and Deon Bunch, a co-partnership, doing business as Brunson & Bunch.

GLENN A. LANE and
H. H. SLATE,
Attorneys for Appellants.

/s/ By H. H. SLATE.

Received copy of the within Statement of Points Upon Which Appellants Intend to Rely on Appeal this ..... day of February, 1949.

/s/ S. Y. ALLEN,
Attorney for Wilbert C. Hamilton.

[Endorsed]: Filed Feb. 14, 1949.

[Title of Circuit Court of Appeals and Cause.]

APPELLANTS DESIGNATION OF PORTION OF RECORD TO BE PRINTED FOR APPEAL

Come now the appellants, and herein designate the portions of the record in the above-entitled cause, to be printed as material, to the consideration of the appeal pending herein, as follows, to wit:

(1) Original Involuntary Petition in Bankruptcy, pages 2 through 7.

(2) Judge's Order of Reference, pages 8 through 9.

(3) Answer to Involuntary Petition in Bankruptcy, pages 10 through 18.

(4) Petition to File First Amended Involuntary Petition in Bankruptcy, page 20.

(5) Order of Referee to File First Amended Involuntary Petition in Bankruptcy, page 20.

(6) First Amended Involuntary Petition in Bankruptcy, pages 21 through 29.

(7) Answer to First Amended Involuntary Petition in Bankruptcy, pages 40 through 45 and pages 76 through 84.

(8) Request for Jury Trial, page 52.

(9) Interrogatories of Respondent Wilbert C. Hamilton to First Amended Petition in Bankruptcy, pages 46 through 50.

(10) Order Requiring Petitioning Creditors to Answer Interrogatories, page 51.

(11) Answers of Petitioning Creditors to Interrogatories, pages 56 through 75.

(12) Findings of Fact and Conclusions of Law, pages 124 through 130.

(13) Judgment of Court, pages 131 through 133.

(14) Motion for New Trial, pages 134 through 142.

(15) Affidavits of Glenn A. Lane, H. H. Slate, G. N. Williams, and G. B. McClyman, in Support of Motion for New Trial, pages 143 through 158.

(16) Order of Court Denying Motion for New Trial, page 168.

(17) Notice of Appeal, page 169.

(18) Cost Bond on Appeal, page 170.

(19) Affidavit for Order and Order Extending Time to Prepare Transcript and Docket Appeal, pages 208, through 211.

(20) Memorandum Decision by the Court, pages 115 through 118.

(21) Statement of Points on Which Appellants Intend to Rely on Appeal, pages 171 through 174.

(22) Reporter's Transcript of proceedings, as follows:

a. Page 4, line 5, through page 5, line 25.
b. Page 47, line 5, through page 49, line 9.
c. Page 52, line 12, through page 56, line 8.
d. Page 67, line 12, through page 83, line 16.
e. Page 92, line 17, through page 99, line 15.
f. Page 102, line 2, through page 106, line 3.

g. Page 210, line 1, through page 223, line 9.
h. Page 242, line 7, through page 247, line 6.
i. Page 352, line 24, through page 353, line 3.
j. Page 434, line 15, through page 439, line 15.
k. Page 445, line 12, through page 445, line 25.
l. Page 458, line 22, through page 460, line 24.
m. Page 512, line 15, through page 513, line 19.
n. Page 525, line 24, through page 528, line 4.
o. Page 601, line 12, through page 601, line 20.
p. Page 621, line 9, through page 622, line 7.
q. Page 624, line 11, through page 624, line 18.
r. Page 702, line 2, through page 702, line 19.
s. Page 705, line 23, through page 706, line 18.
t. Page 711, line 8, through page 713, line 15.
u. Page 720, line 22, through page 722, line 10.
v. Page 724, line 13, through page 724, line 23.
w. Page 767, line 16, through page 770, line 2.
x. Page 865, line 19, through page 865, line 25, the word "partnership" only.

GLENN A. LANE and
H. H. SLATE,
Attorneys for Appellants.

/s/ By H. H. SLATE.

Received copy of the within Appellants Designation of Portion of Record to Be Printed for Appeal this 10th day of February, 1949.

/s/ S. Y. ALLEN,
Attorney for Wilbert C. Hamilton.

[Endorsed]: Filed Feb. 14, 1949.